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IN THE

Supreme Court of the United States

OCTOBER TERM, 1968

NO. 224

J. P. STEVENS & CO., INC.,

Petitioner

vs.

NATIONAL LABOR RELATIONS BOARD

and

TEXTILE WORKERS UNION OF AMERICA, AFL-CIO

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

WHITEFORD S. BLAKENEY
Charlotte, North Carolina
Attorney for the Petitioner

Of Counsel:
BLAKENEY, ALEXANDER & MACHEN
North Carolina National Bank Building
Charlotte, North Carolina

PAUL, WEISS, RIFKIND, WHARTON & GARRISON
575 Madison Avenue
New York, New York

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PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

To the Honorable, the Chief Justice and the Associate Justices of the Supreme Court of the United States:

The Petitioner prays the Court for a Writ of Certiorari directed to the United States Court of Appeals for the Second Circuit, to the end that this Court may review a Decision which that Court has rendered in a case involving the parties above-named. And the Petitioner respectfully shows to this Court:

THE OPINION OF THE COURT BELOW AND THE DECISION AND ORDER OF THE ADMINISTRATIVE AGENCY

The Opinion of the United States Court of Appeals for the Second Circuit is reported at 388 F. 2d 896 (2nd Cir., 1967). The Opinion is also printed, along with the Decree of the Court, in the Appendix to this Petition.

The case came to the Court of Appeals for the Second Circuit upon Petitions for Review of a Decision and Order of the National Labor Relations Board. The Decision and Order of the Board, 163 NLRB No. 24 (1967), is likewise printed in the Appendix to this Petition.

JURISDICTION OF THIS COURT

The judgment or decree of the Court below is dated March 26, 1968, and was entered on that date.

A Petition for Rehearing, which prayed, in the alternative, for modification of the terms of a decree proposed by the National Labor Relations Board, was denied by the Court below on January 5, 1968.

Jurisdiction to review, by Writ of Certiorari, the decree of the lower Court is conferred on this Court by the provisions of 28 U. S. C. §1254.

QUESTIONS PRESENTED FOR REVIEW

This case embodies a number of rulings and directives by the National Labor Relations Board, which are unusual and extreme in nature. The principal questions raised by these rulings and directives may be stated as follows:

(1) Is the Labor Board to be sustained in requiring an employer to turn over to a labor Union the bulletin boards inside the employer's plants, so that the Union may there post whatever it "reasonably" wishes to post, for a period of one year?

(2) Is the Board to be sustained in compelling the employer to assemble his employees and read to them a public confession of guilt in words and terms dictated by the Labor Board?

(3) In lieu thereof, may the Board send an emissary into the employer's plants to read such declaration to the assembled employees in the employer's stead?

(4) Is the Board to be sustained in ordering a three-fold communication of such declaration by the employer to the employees, that is, by reading it to them, by posting it in front of them, and also by mailing it into their homes?

(5) Is the Board to be sustained in ordering the employer to turn over plant bulletin boards to the Union, and to post and mail the prescribed notice to employees, not only in the plants where unfair labor practices are found to have occurred, but in a far larger number of plants throughout the States of North Carolina and South Carolina, most of which have never been in any way involved, or even mentioned, in this case or in any other Labor Board case?

(6) In proceedings before the Board, relative to the discharge of employees, when there is no evidence that the employees would not have been discharged had they been unconnected with any Union—and when the employer affirmatively shows reasonable, and often undisputed, cause

for their discharge, and asserts that under the circumstances the employees would have been discharged for just cause whether connected with any Union or not—is the Board to be sustained in ruling that nevertheless the discharges were unlawful?

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Portions of the Constitution of the United States and of the National Labor Relations Act pertinent to this case are as follows:

"Congress shall make no law . . . abridging the freedom of speech . . ."

First Amendment to the Constitution of the United States

"No person shall be . . . deprived of life, liberty, or property, without due process of law . . ."

Fifth Amendment to the Constitution of the United States

"The expressing of any views, argument, or opinion, or the dissemination thereof, whether in written, printed, graphic, or visual form, shall not constitute or be evidence of an unfair labor practice under any of the provisions of this subchapter, if such expression contains no threat of reprisal or force or promise of benefit."

29 U. S. C. §158(c)

"No order of the Board shall require the reinstatement of any individual as an employee who has been suspended or discharged, or the payment to him of any back pay, if such individual was suspended or discharged for cause."

29 U. S. C. §160 (c)

STATEMENT OF THE CASE

This case arises out of proceedings brought by the National Labor Relations Board against J. P. Stevens & Co., Inc., now Petitioner before this Court. This Company owns and operates textile plants in a number of States from New England Southward, principally, however, in the States of North Carolina and South Carolina, where 43 of the plants are located. The Company has approximately 45,000 employees.

In a prior case, involving the same parties[1], the Labor Board ruled that unfair labor practices had occurred in 19 of the Company's plants in North Carolina and South Carolina, during the approximate period mid-1963 to mid-1964. The ruling of the Board in the present case is that, during the approximate period mid-1964 to mid-1965, additional unfair labor practices have occurred in 8 of the 19 plants which were involved in the previous case.

These additional unfair labor practices are claimed to be the discharge of 18 employees in alleged violation of the National Labor Relations Act, and the alleged wrongful denial of overtime work to another employee, and alleged interrogations, promises and threats in violation of the Act.

In rendering its decision, the Labor Board imposed upon the Company a number of "remedy" directives, which it characterized as beyond the "conventional". (Appendix, p. 69a).

Upon the issuance of the Board's Decision and Order, the Company, as authorized by 29 U.S.C. §160(f), promptly

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[1] *J. P. Stevens & Co., Inc., vs. National Labor Relations Board,* 380 F. 2d 292 (2nd Cir., 1967).

filed a Petition for Review in the United States Court of Appeals for the Fourth Circuit—the plants involved being located within that Circuit, and the unfair labor practices having been alleged to have occurred there, and all the Labor Board hearings and proceedings having been conducted there.

Thereafter, the Textile Workers Union of America, AFL-CIO, which had initiated the charges against the Company before the Labor Board, filed a Petition for Review in the United States Court of Appeals fo the Second Circuit, upon a claim of aggrievement that the Board had failed to find the Company guilty of each and every wrong alleged in the Complaints.

Although the Company's Petition for Review in the Fourth Circuit antedated that of the Union in the Second Circuit, the Union was successful, over the Company's protest, in having the case transferred to, and heard and decided in, the United States Court of Appeals for the Second Circuit.

In the Court of Appeals for the Second Circuit, the Board's rulings and directives were sustained—with two modifications, one of which the Board assented to.[1]

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[1]*Textile Workers Union of America, AFL-CIO vs. National Labor Relations Board,* 388 F. 2d 896, 904, 906 (2nd Cir., 1967) (Appendix, p. 1a, 17a, 23a).

ARGUMENT AMPLIFYING REASONS WHY A WRIT OF CERTIORARI SHOULD BE GRANTED

I.

The Extraordinary Directives Of The Labor Board In This Case

Before reviewing for this Court the substantive rulings of the Labor Board and of the Court below, the Petitioner would respectfully bring to the Court's attention some considerations bearing upon the novel "remedies" which have been decreed in this case.

As to all of these it is first to be observed that no hearing has ever been held, and no discussion or argument has ever been heard or invited by the Board, on any question as to whether these remedies, or any of them, or any like them, would be appropriate or should be considered in this case, or in any case involving this Petitioner.

What reasoning or justification does the Board bring forward in support of the unusual directives here imposed? Essentially, the Board simply declares that the Company's unfair labor practices are "massive," and that therefore it should be subjected to these extraordinary orders.

Preliminarily, however, it might be noted that an allegation that 18, out of 45,000 employees, were wrongfully terminated, over a period of approximately a year's time, hardly seems to assert, upon the face of it, a case of "massiveness."

The view of the Board seems to be that its novel orders automatically follow from the momentum generated by the Board in the prior Stevens case—a case in which the

Board, over a period of months, heard 443 witnesses[1] testifying on a multitude of disputed and material factual issues, and upon such conflict never once found any witness for the Company to be telling the truth or any witness for the Union or the Board to be telling anything but the truth!

The Board says that it feels "the necessity of being imaginative" in its decrees (Appendix, p. 70a). Surely, however, this Court will recognize that a trend toward "imaginative" orders and edicts is the road away from government by law and toward government completely at the will and discretion of men.

A. The Directive That The Company Shall Turn Over Its Plant Bulletin Boards To The Union

One of the Board's decrees against the Company is that the Union shall be permitted to post on the bulletin boards, inside all the Company's plants throughout the States of North Carolina and South Carolina, whatever the Union "reasonably" wishes to post there for a period of one year.

In this the Board completely takes leave of any concept of requiring the Company to disavow and correct unfair labor practices. Obviously and undeniably the nature and purpose of this directive is simply to aid the Union in its organizing efforts among the Company's employees—and to require the Company to furnish such aid to the Union by turning over property and facilities within the Com-

[1] A majority of whom testified for the Company. They included not only supervisors and representatives of management, but rank and file employees and persons unconnected with the Company as well.

pany's plants, and in the midst of its employees while they are at work, on a continuing basis for a period of a year.

In the prior Stevens case, the Second Circuit Court of Appeals held that the Board had showed nothing justifying such an order. *J. P. Stevens & Co., Inc. vs. National Labor Relations Board,* 380 F. 2d 292, 305 (2nd Cir., 1967). In the present case, the record has nothing in it whatever on this subject. Yet the same Court now upholds this directive, after having expressly disapproving it in the earlier case.

The Court says:

> "In the case before us, the Board contends that Union access to the bulletin boards is necessary in order to offset the Company's use of the boards in its campaign of coercion and in the posting of lists of employees who had joined the Union, the names of those employees who withdrew being 'scratched' from the lists. We think that in view of the Company's use of the boards in combatting the Union, giving the Union reasonable access to them will effectuate the purposes of the Act, in that it will help to restore to the employees the opportunity to hear all viewpoints."
>
> *Textile Workers Union of America, AFL-CIO vs. National Labor Relations Board,* 388 F. 2d 896, 905 (2nd Cir., 1967)
> (Appendix, p. 1a, 20a)

As has been emphasized, however, there is nothing at all in the record, of the present case, showing any use of the plant bulletin boards "in combatting the Union" in any manner whatever.

In the prior case, there was evidence that on the bulletin boards in some of the plants a statement of the Company's position regarding the Union had been posted, and further evidence that in certain of these plants there had been posted copies of Company's letters in reply to employees, who had written to the Company notifying the Company of their Union affiliation. There has otherwise never been any evidence at any time of any "posting of lists of employees who had joined the Union," nor any evidence that the Company ever had any connection with any "scratching," at any location, of the names of any employees "who withdrew" from the Union.

As to "restoring to the employees the opportunity to hear all viewpoints," there has never been any evidence of any lack of any such opportunity. On the contrary, the record in both cases is replete with references to repeated and continuous contacts by Union representatives with the Company's employees—around the plant premises, at the employees' homes, at Union meeting halls, and through leaflets, letters, telephone calls, visits and assemblages.

Such being the evidence, and the only evidence, on this matter in the previous case, the Court below rejected the directive in question. Yet now the Court, with nothing in the present record on the subject at all, approves what it previously disapproved.

Moreover, this directive is made to apply to all of the Company's plants in the States of North Carolina and South Carolina, most of which have never been touched by a single word of evidence in either of these cases. As to them the records in both cases are completely blank.

Nothing shows even the names or locations of such plants. Nothing shows that there has ever been any intimation of any Union organizing efforts at those plants. Nothing shows or indicates that the Company, or any representative of the Company, has ever said anything about the Union to any employee in any of those plants at any time.

Yet they, as truly as the plants in which unfair labor practices are alleged to have occurred, are ordered to turn over to the Union all their bulletin boards for a period of one year.

It is startling to contemplate what actions and consequences may be encompassed within this edict. It is, in the first place, thoroughly nebulous. The Board makes not even a casual effort to define or limit the nature of the material which the Union may place on the Company's bulletin boards, nor the quantity thereof—nor the frequency of the Union "representative's" access to the bulletin boards.

What would be "reasonable" Union uses of these bulletin boards under all the varying circumstances of plant operations are indeed matters on which "reasonable," yet genuine, disagreements would almost inevitably occur. Controversy over such questions, could produce a veritable tangle of litigation—unless the Board could persuade the Courts, as indeed it seeks, to leave all such matters to the Board's discretion, unfettered and unbridled.

Nor is it a realistic assessment of the situation to consider that the question is merely one of allowing the Union to have space on the Company's bulletin boards. Actually, it is a matter of placing in the Union's hands a very large

measure of control over operations in the Company's plants —and over the success or failure of such operations. For by means of what it might place in front of employees while at their work, the Union could excite them, arouse them, or distract them, and create widespread deterioration of morale and performance in the Company's plants.

It might or might not have been in vain for the Company to have argued property rights to the Board[1]—pointing out to the Board that the "right of property" is a cornerstone of any free society, and that the Constitution of the United States fundamentally provides that neither Federal or State Government and therefore no arm or agency of either, may invade or take any man's property without due process of law.

But whatever reception such considerations and arguments might have had at the hands of the Labor Board, surely they are not unavailing here, and the Petitioner earnestly presses them upon the attention of this Court.

> "Whatever else may be uncertain about the definition of the term 'due process of law,' all authorities agree that it inhibits the taking of one man's property and giving it to another, contrary to settled usages and modes of procedure, and without notice or an opportunity for a hearing."
>
> *Ochoa vs. Hernandez Y. Morales,*
> 230 U. S. 138, 161, 139 S. Ct.
> 165, 57 L. Ed. 1427, 1437

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[1]But, as hereinabove pointed out, the Company never had any opportunity to do so.

"It [the Act] does not require that the employer permit the use of its facilities for organization when other means are readily available."

National Labor Relations Board vs. Babcock & Wilcox Co., 351 U. S. 105, 114, 76 S. Ct. 679, 100 L. Ed. 975, 983

B. The Directive With Respect To The Reading Of A Company Declaration And Confession To Employees

By further exercise of the "imaginative" the Board has decreed that in the plants as to which unfair labor practice rulings have been made, the Company shall "convene during working time, by departments and by shifts, all its employees" and "shall read" to them a declaration as prescribed and worded by the Board (Appendix, p. 80a).

This declaration is essentially a confession of guilt. There is no doubt but that the impression of any audience would be that the employer is being forced to confess that he has broken the law and is being required to declare that he will not do so again. And that, indeed, is the true nature of the situation. For the statement prescribed in this case speaks repeatedly of this Company's "discrimination" against employees in terminating them, and of its "discriminatorily" withholding work from them (Appendix, p. 78a, 83a).

Let us picture a situation in which an official of the Company is standing in front of assembled employees, reading the required statement to them. There is no evading or

avoiding the fact that as the Company's official reads the Company's signed statement, referring to the Company's discriminations, *declaration and confession is being made that the Company has discriminated—and that the Company has thereby violated the law—and is guilty.*

It is submitted that this is an amazing edict for an agency of our Government to hand down. In this land *no* citizen may be compelled to confess guilt or declare himself a violator of the law—or so it has been until now.

This Court has been at great pains to see to it that no one is unduly influenced to confess guilt. *Miranda vs. Arizona,* 384 U. S. 436; *Escobedo vs. Illinois,* 378 U. S. 478. Yet here an arm of the Federal Government orders it, and directs that it be done before assemblages of fellow citizens.

Even the convicted felon can never be compelled to confess that he has violated the law, and he can always and forever deny guilt and, indeed, at every opportunity proclaim that he has been unjustly convicted. Are the rights of employers in labor matters less?

As Judge Learned Hand, speaking exactly to this subject, said so clearly:

> "Forcibly to compel anyone to declare that the utterances of any official, whoever he may be, are true, when he protests that he does not believe them, has implications which we should hesitate to believe Congress could ever have intended . . . [T]oo long a history, and too dearly bought privileges, are behind such refusals . . . [W]e can very well understand the sense of outrage which anyone may feel at being forced publicly to declare that he has

committed even a minor dereliction of which in his heart he does not believe himself guilty."

Art Metals Construction Co. vs. National Labor Relations Board, 110 F. 2d 148, 151 (2nd Cir., 1940)

It might be noted that the declaration required of the employer in the instant case does not contain language, such as was present in the case last above quoted, by which the employer would proclaim that it will "cease and desist" from unlawful actions[1]. The principle is nevertheless the same, for the declaration here prescribed, as pointed out above, does refer repeatedly to "discrimination"—violative of the law—on the part of the Company, and to actions, "discriminatorily," and therefore wrongfully and unlawfully, engaged in by the Company.

". . . [W]e cannot believe that it was the intention of Congress to countenance an administrative order the effect of which is to require from one who denies that he has violated the law a confession that he has violated it. Such a notice as has been approved by this Court accomplishes the same result as the one ordered by the Board and avoids the unnecessary humiliation involved in an order which in effect requires the employer to confess

[1]cf. *J. P. Stevens & Co., Inc. vs. National Labor Relations Board,* 380 F. 2d 292, 304 (2nd Cir., 1967).

publicly a violation of the law which he denies, and has the right to deny, even though he may have been found guilty of the violation."

Hartsell Mills Co. vs. National Labor Relation Board, 111 F. 2d 291, 293 (4th Cir., 1940)

The Court below says that it regards the requirement in question "somewhat less emotionally"[1]. It is respectfully submitted that such view does not sufficiently take into account the deep and historic issue which is brought to the surface.

The forcing of public declarations, in the nature of confessions or recantations, is not a matter to be lightly entered upon. The annals of human struggles should make this abundantly clear.

The feeling and the resolution of free men against forced utterances can become extremely intense. Over many centuries, they have suffered oppressions and even death rather than disavow wrongs which they deeply and devoutly believed they had not committed.

It is tragic that we should now have in our Government even the slightest veering in such a direction. He who cannot see in these newly devised directives of the Labor Board an ominous trend—whether so intended or not—backwards toward old oppressions, is one who does not learn from the lessons of history and of human experience. In

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[1]*Textile Workers Union of America, AFL-CIO vs. National Labor Relations Board,* 388 F. 2d 896, 904 (2nd Cir., 1967) (Appendix, p. 17a).

such manner are fundamental rights eroded—and freedom gradually, yet wholly, lost.

> "... [I]llegitimate and unconstitutional practices get their first footing in that way, namely: by silent approaches and slight deviations from legal modes of procedure ... It is the duty of courts to be watchful for the constitutional rights of the citizen, and against any stealthy encroachments thereon."
>
> *Boyd vs. United States,* 116 U. S. 616, 635, 6 S. Ct. 524, 29 L. Ed. 746, 752

Justice Brandeis, dissenting in *Olmstead vs. United States,* refers to *Boyd vs. United States,* from which the foregoing language is quoted, as "a case that will be remembered as long as civil liberty lives in the United States," and goes on himself to observe that:

> "Experience should teach us to be most on our guard to protect liberty when the government's purposes are beneficent. Men born to freedom are naturally alert to repel invasion of their liberty by evil-minded rulers. The greatest dangers to liberty lurk in insidious encroachment by men of zeal, well-meaning, but without understanding."
>
> *Olmstead vs. United States,* 277 U. S. 438, 479, 48 S. Ct. 564, 72 L. Ed. 944, 957 (Dissent by Justice Brandeis)

And the eloquent admonition of Justice Sutherland, dissenting in *Associated Press vs. National Labor Relations*

Board, has true application indeed to the situation now before this Court:—"Do the people of this land—in the providence of God, favored, as they sometimes boast, above all others in the plenitude of their liberties" desire to preserve them, he asked.

> "If so, let them withstand all *beginnings* of encroachment. For the saddest epitaph which can be carved in memory of a vanished liberty is that it was lost because its possessors failed to stretch forth a saving hand while yet there was time."
>
> *Associated Press vs. National Labor Relations Board,* 301 U. S. 103, 141, 57 S. Ct. 650, 81 L. Ed. 953, 965

Already, the only two Courts, other than the Court below, which have considered this reading-of-notice directive have strongly disapproved it. The United States Courts of Appeals for both the Fifth Circuit and the District of Columbia Circuit are in direct disagreement with the Second Circuit on this subject.

> "The requirement of the Recommended Order that the Notice be read by management to any employee who requests it, as amended by the Board to require it be read to each employee, singly or collecetively, is unnecessarily embarrassing and humiliating to management rather than effectuating the policies of the Act."
>
> *National Labor Relations Board vs. Laney & Duke Storage Warehouse Co.,* 369 F. 2d 859, 869 (5th Cir., 1966)

The Court of Appeals for the District of Columbia, specifically noting the decision of the Second Circuit Court on this matter in the prior Stevens case, nevertheless declared:

> "The ignominy of a forced public reading and a 'confession of sins' by any employer, any employee, or any Union representative, make such a remedy incompatible with the democratic principles of the dignity of man."
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> *International Union of Electrical, Radio and Machine Workers, AFL-CIO vs. National Labor Relations Board and Scott's, Inc.*, 383 F. 2d 230, 234 (D. C. Cir., 1967).

It is submitted, however, that beyond "democratic principles," there is here involved the ultimate principle of individual liberty and freedom—"the cherished rights of mind and spirit"[1]—guaranteed to every citizen by our written Constitution—against the encroachment of any and all power, including that of Government itself.

It is to be observed that, by way of palliative, the Court below offered an "option" to the effect that the reading of the declaration might be done "by representatives of the Board rather than by the Company's officials."[2]

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[1] *Malloy vs. Hogan*, 378 U. S. 1, 5, 84 S. Ct. 1489, 12 L. Ed. 2d 653, 657.

[2] *Textile Workers Union of America, AFL-CIO vs. National Labor Relations Board*, 388 F. 2d 896, 904 (2nd Cir., 1967) (Appendix, p. 17a).

If, however, the employer must assemble his employees and open his premises to an agent of the Labor Board, who stands and reads the employer's declaration for him, the true nature of the situation is not altered or disguised. The forced statement of the employer is simply being spoken for him by a forced agent.

Certainly, also, on such a stage, the Government is being cast in an entirely new and most unflattering role—as its delegate solemnly declaims in public view a statement as coming from the employer, which is in truth no voluntary statement of the employer at all but a compelled and forced declaration. It may safely be said that such a scene has not been enacted in this land since the founding of our Republic.

The Court of Appeals for the District of Columbia specifically considered this "option" as put forward by the Court below, and unhesitatingly rejected it.

> "This procedure, however, creates a problem more severe than the one it supposedly solves.
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> . . .
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> "Board involvement in a reading of the order would inescapably draw the Board into the very conflict areas it should remain aloof from, except for the need to judge."
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> *International Union of Electrical, Radio and Machine Workers, AFL-CIO vs. National Labor Relations Board and Scott's, Inc.*, 383 F. 2d 230, 233 (D. C. Cir., 1967)

C. The Directives That The Prescribed Declaration Shall Be Thrice Communicated To Employees And That Posting And Mailing Of The Declaration And Union Access To Bulletin Boards Shall Be Required At Plants Not In Any Way Involved In Any Claim Of Unfair Labor Practice

The Board, with the endorsement of the Court below, orders not only the reading of the Company's statement of confession to the employees, but also orders that the Company shall post signed copies of it on plant bulletin boards and likewise mail signed copies into the homes of employees (Appendix, p. 79a).

Apart from the other considerations herein discussed, the question naturally arises:—Why such triplicate "notification"? Once the notice has been placed on the bulletin boards, where the employee regularly reads notices, does he need—and does he desire—receiving exactly the same notice in the mail at his home? And is he not surfeited indeed with this "notification" when he returns to the plant and is taken off his job and read the same notice again? It would seem that he is being somewhat over-notified.

It is clear that after a proper and systematic posting of the notice has been accomplished, the Board's true purpose beyond that is not notification at all, but is simply the placing of the Company in as many postures of obeisance as the Board can devise.

Still further, the Board decrees, and the Court below sustains its decree, that the ordered declaration must be

posted on bulletin boards and mailed to the homes of employees—and that likewise the Union must be allowed to post on the bulletin boards whatever it may "reasonably" desire to post—at all of the Company's plants in North Carolina and South Carolina, though at most of them there has never been any claim of any wrongdoing of any nature (Appendix, p. 79a).

The Board says:—"we believe it necessary" to make these directives "applicable to all" the Company's plants in North Carolina and South Carolina in order that the employees in all of them may "be informed" of the Company's "intention to refrain from coercing them"[1]. (Appendix, p. 74(a).

In the previous case, the Board added to this bare statement the further assertion that the Company's unfair labor practices "were so well publicized" that they must surely have had "a coercive impact" on all the Company's other employees "in the area."

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[1]If the Board were interested in determining whether the employees of this Company really were under "coercion" from the Company, it would seem that it should pay some heed to the unquestionable fact that during the course of the Union's organizing efforts among the Company's employees—at the specific requests of the Union and *at times and places chosen by the Union*—the Board has conducted elections in 10 of the Company's plants and in every instance the employees have voted, by *secret ballot*, decisively against the Union—and that in one plant, the Company's largest, the Board conducted a re-run election, holding it at the Union's insistence away from the plant, and yet the employees went to the polling place and voted the Union down by a majority more than twice as large as before.

Yet it is an undeniable fact that there was not in the record of the prior case—and there is not in the record of the present case—a single shred of evidence supporting that pronouncement on the part of the Board. There is no evidence, and there has not at any time been any evidence, that any actions of the Company were "well publicized," nor indeed publicized at all. There is no evidence, and there has been no evidence, that there has ever been at any time, or in any way, any "coercive" effect or influence whatever upon any employees in the Company's other plants.

The fact that there is not a scintilla of evidence that employees in other plants have ever been in any way coerced —or that they are aware of anything even tending to coerce them—does not deter the Board from applying its novel "remedies" to them.

> "Notwithstanding that there was no charge of unfair labor practices as to three of the plants, and that the charge was dismissed as to one, this order requires that notices be posted in all of them. In support of this provision, the Board argues that the unfair labor practices were system-wide, centrally directed and coordinated and, therefore, the order should apply to all plants. It cites in support of its position *N. L. R. B. vs. Express Publishing Co.*, 312 U. S. 426, 438, 61 S. Ct. 693, 85 L. Ed. 930. In our judgment, there is nothing in this case which supports the Board's position. On the other hand, in *N. L. R. B. vs. Ford Motor Co.*, 5 Cir., 119 F. 2d 326, the court expressly held against the Board's contention in a similar situation. The court found the Board was with-

out jurisdiction to make an order broader than the subject matter of the complaint. We agree with this conclusion. Furthermore, we think that petitioner, if it, at some future time, should be charged with an unfair labor practice at a plant or plants not included in the instant proceeding, would be entitled to a hearing before the Board, rather than this court in a contempt proceeding."

Reliance Manufacturing Co. vs. National Labor Relations Board, 125 F. 2d 311, 321-322 (7th Cir., 1941).

"Respondent company contends that there was no substantial evidence that it had followed any unlawful hiring practices at any projects other than Paducah; and with this contention, we agree.

. . .

"In accordance with the foregoing, the order of the Board is modified by deleting the requirement that respondent company post the copies of the notice required by the Board, at places or projects other than the project at Paducah, Kentucky."

National Labor Relations Board vs. F. H. McGraw & Co., 206 F. 2d 635, 641 (6th Cir., 1953)

To the same effect are the decisions in:

Shell Oil Co. vs. National Labor Relations Board, 196 F. 2d 637 (5th Cir., 1952).

National Labor Relations Board vs. Thompson Ramo Wooldridge, Inc., 305 F. 2d 807, 811 (7th Cir., 1962).

On the whole subject of remedy directives, the Labor Board deems that it has a wide latitude, "to tailor"[1] and devise orders which will "effectuate the policies of the Act," and that in this it has developed a superior talent and discernment, which has generally come to be referred to as administrative "expertise."

The first and basic caveat with respect to this proposition is that if accepted at face value, it would mean that the power of the Board is virtually limitless. For, as becomes apparent in the present case, there is practically nothing that the Board might not require of an employer in the guise of "tailoring a remedy."

It is vital to note that the National Labor Relations Act does not itself give any presumptive validity whatever to "remedy" devising by the Board. Such presumption of validity, accorded by the Act to the "findings of the Board with respect to questions of fact if supported by substantial evidence on the record considered as a whole" is not provided with respect to the Board's decreeing of remedies. 29 U. S. C. 160(e).

"Remedy" directives are left unqualifiedly within the judgment and discretion of the Court—the Court weighing and appraising them for itself and "enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part the order of the board" entirely as the Court may see fit. 29 U. S. C. 160(e). This consideration is of particular force where, as here, the remedy directives are innovations

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[1] *H. W. Elson Bottling Co.*, 155 NLRB 714, 60 LRRM 1381 (1965).

and, as the Board itself recognizes, beyond "the conventional."

Moreover, the real truth is that the Labor Board has no more "expertise" for appraising these remedies, against the background of the law and the rights and interests of all the parties, than do Courts of law and equity—nor as much—sophisticated phraseology, in behalf of the Board, to the contrary notwithstanding.

It is respectively submitted that reviewing Courts should not be too ready to relax their scrutiny, and too willing to agree that the judicial function is largely preempted, when the Board raises the magic talisman of "expertise" or intones a solemn incantation about "tailoring a remedy."

> "Reviewing Courts must be influenced by a feeling that they are not to abdicate the conventional judicial function. Congress has imposed on them responsibility for assuring that the Board keeps within reasonable grounds."
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> *Universal Camera Corporation vs. National Labor Relations Board,* 340 U. S. 474, 490, 95 L. Ed. 456, 468

> "The deference owed to an expert tribunal cannot be allowed to slip into a judicial inertia which results in the unauthorized assumption by an agency of major policy decisions properly made by Congress."
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> *American Ship Building Co. vs. National Labor Relations Board,* 380 U. S. 300, 318, 85 S. Ct. 955, 13 L. Ed. 2d 855, 867

"... '[U]nless we make the requirements for administrative action strict and demanding, *expertise* . . . can become a monster which rules with no practical limits on its discretion' . . . 'Congress did not purport to transfer its legislative power to the unbounded discretion of the regulatory body'."

Burlington Truck Lines, Inc. vs. United States, 371 U. S. 156, 167, 83 S. Ct. 239, 9 L. Ed. 2d 207, 215

"Nothing in the statute, nothing in any of the decisions lends countenance to the view that Congress intended to make of the Circuit Courts of Appeals mere rubber stamps, mere perfunctory executors of the Board's unrestrained will. They make the contrary quite clear. It is, therefore, for this court, in the performance of its function under the statute, to say not blindly but in the exercise of an informed discretion, first, whether the findings are supported by the evidence, and, second, whether the Board's orders are *appropriate* under the statute."

National Labor Relations Board vs. Ford Motor Co., 119 F. 2d 326, 330 (5th Cir., 1941)

"Furthermore, we are convinced that this is not a case in which administrative expertise is of compelling weight. It is not a problem of such great technicality that only experts can untangle it . . . [H]e is no friend of administrative law who thinks that the Commission should be left at large."

National Labor Relations Board vs. Kingston Cake Co., 206 F. 2d 604, 611 (3rd Cir., 1953)

"The Supreme Court has made it clear that national labor policy is for the Congress and not the Board to determine."

Armco Steel Corporation vs. National Labor Relations Board, 344 F. 2d 621, 625 (6th Cir., 1965)

". . . [S]everal recent decisions emphasize the necessity that a statutory basis, either expressed or reasonably implied, be found when the Board undertakes to fashion policies which, in its judgment, are desirable in balancing the conflicting interests between management and labor."

National Labor Relations Board vs. Dalton Brick & Tile Corporation, 301 F. 2d 886, 894 (5th Cir., 1962)

"We have said that 'this authority to order affirmative action does not go so far as to confer a punitive jurisdiction enabling the Board to inflict upon the employer any penalty it may choose because he is engaged in unfair labor practices even though the Board be of the opinion that the policies of the Act might be effectuated by such an order.' We have said that the power to command affirmative action is remedial, not punitive.

. . .

"In that view, it is not enough to justify the Board's requirements to say that they would have the effect of deterring persons from violating the Act. That argument proves too much, for if such a deterrent effect is sufficient

to sustain an order of the Board, it would be free to set up any system of penalties which it would deem adequate to that end."

Republic Steel Corp. vs. National Labor Relations Board, 311 U. S. 1, 7, 11-12, 85 L. Ed. 6, 10, quoting *Consolidated Edison Co. vs. National Labor Relations Board,* 305 U. S. 197, 235-236, 59 S. Ct. 206, 83 L. Ed. 126, 143

"The powers conferred upon this court by the National Labor Relations Act to enforce the orders of the Board are equitable in nature and may be invoked only if the relief sought is consistent with the principles of equity."

National Labor Relations Board vs. National Biscuit Co., 185 F. 2d 123, 124 (3rd Cir., 1950)

The following are further examples of cases in which "remedies" devised by the Board have been held by the Courts to be beyond the proper exercise of the Board's authority:

Local 60, United Brotherhood of Carpenters and Joiners vs. National Labor Relations Board, 365 U. S. 651, 81 S. Ct. 875, 6 L. Ed. 2d 1.

Consolidated Edison Co. vs. National Labor Relations Board, 305 U. S. 197, 83 L. Ed. 126.

Western Union Telegraph Co. vs. National Labor Relations Board, 113 F. 2d 992 (2nd Cir., 1940).

Local 357, International Brotherhood of Teamsters vs. National Labor Relations Board, 275 F. 2d 646 (D. C. Cir., 1960).

Morrison-Knudsen Company vs. National Labor Relations Board, 276 F. 2d 63 (9th Cir., 1960).

National Labor Relations Board vs. American Dredging Company, 276 F. 2d 286 (3rd Cir., 1960).

National Labor Relations Board vs. United States Steel Corporation, 278 F. 2d 896 (3rd Cir., 1960).

National Labor Relations Board vs. Kiekhaefer Corporation, 292 F. 2d 130 (7th Cir., 1961).

National Labor Relations Board vs. Miscellaneous Drivers and Helpers Local 610, 293 F. 2d 437 (8th Cir., 1961).

Local 1351, Steamship Clerks and Checkers vs. National Labor Relations Board, 329 F. 2d 259 (D. C. Cir., 1964).

National Labor Relations Board vs. Prince Macaroni Manufacturing Co., 329 F. 2d 803 (1st Cir., 1964).

Communications Workers of America vs. National Labor Relations Board, 362 U. S. 479, 80 S. Ct. 838, 4 L. Ed. 2d 896.

The Petitioner respectfully urges that this is a case which justifies the attention of this Court. The "remedy" decrees which have been issued in this case by the Labor

Board, and upheld by the Court below, definitely have in them the seeds—if not yet the full flower—of government controlled more and more by the will of men rather than by the rule of law.

II.

The Labor Board's Unusual Treatment Of The Evidence In This Case

The substantive controversy of this case centers around the employee discharges which are involved. It is submitted that in reaching its conclusions against the Petitioner, the Labor Board has not followed the normal principles of logic, of law, and of reasonableness which are rightly applicable to any process of fact determination.

For example, the Board's Trial Examiner began his Decision with a ruling, subsequently endorsed by the Board, that one, Ben Surratt, who never appeared at the hearing at all, should be reinstated with back pay. When counsel for the Board at the hearing, expressed perplexity as to Surratt's whereabouts and as to why he had failed to appear for testifying in his own behalf, the Examiner observed that "Surratt obviously would have to be here for him to have a case" (409-410[1]). Yet in ruling, this was entirely disregarded by both the Examiner and the Board, and the decision was awarded to Surratt without his ever having been seen or heard.

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[1]All references having no other designation than page numbers are references to the transcript of the record made at the hearings before the National Labor Relations Board Trial Examiner, a copy of which is now on file with this Court.

Again, for example, the Board ordered the Petitioner to reinstate with back pay one, Willard Page, who admitted on the witness stand that prior to his discharge, and in the presence of other employees, supervisory and non-supervisory, he called his supervisor "a liar" (1001, 1007). Page further testified that upon being informed that he was discharged, he called the supervisor "a son of a bitch and a bastard and everything else" that he "could think of" (1002-1003). The supervisor testified, without contradiction, that Page supplemented all this with a threat "to smash" the supervisor's "head in" and "break [his] legs," and that "he'd get" the supervisor if it took "twenty years" (1583, 1584). This in no way, however, deterred the Board from ordering that Page be reinstated with back pay.

The Board reaches many drastic conclusions against the Company upon inferences which are nothing other than suppositions and suspicion. It assumes that an employee's Union affiliation is the reason for his discharge, no matter that the Company shows other sensible, reasonable, and often undisputed, cause for his discharge.

The Board repeatedly declares that an employee was discharged because of his being a Union member, when there is no evidence whatever that he would not just as truly have been discharged, had he been unconnected with the Union—and when the Company plausibly asserts that, under the demonstrated circumstances, he definitely would have been discharged whether affiliated or unaffiliated with the Union. In short, the rulings of the Board place this Company in the position of being unable to discharge or disci-

pline an employee, no matter what his failures may be—if only he shows to the Board that he is connected with the Union.

If knowledge of the employee's Union connection is established or conceded, as was the case in most, but not all, instances here—and it being clear, as here, that the employer is opposed to the Union—and the employee being thereafter discharged—is it reasonable and permissible to infer, upon these elements, that the employee was unlawfully discharged? It would seem not. For the deductive process in such situation is a matter of very dubious logic, and the conclusion is still in large measure a matter of surmise and conjecture.

But, in any event, the Company does not rely merely upon that failure of proof on the part of the Board, with respect to any of the terminations here at issue. For here, in every instance, there is affirmatively presented a contrary explanation in favor of the employer—sufficiently clear, substantial and plausible, that it offsets and rebuts and renders logically and legally impermissible any conclusion of guilt which might otherwise have been made.

Yet in the present case—and here is the crucial injustice which they do this Company—the Examiner and the Board move on by main strength to the "inference" of unlawfulness and guilt—turning indifferently away from the explanation favorable to the Company, systematically rejecting or ignoring it, as if it had never been brought forward at all!

Thus ground for discharge being present and witnesses for the Company asserting that the employee was dis-

charged on that account, and that he would have been so discharged whether connected with the Union or not—and there being no proof that were he non-Union he would not have been discharged for the cause shown—the Board nevertheless chooses to infer, that is "finds," that the employee was discharged because of his being connected with the Union.

Yet the Statute affirmatively provides that if an employee is "discharged for cause," there shall be no order in his behalf. 29 U.S.C. §160(c). And the law is clear that the burden is, and remains throughout, upon the Board to prove that the employee was discharged because of Union affiliation on his part.

An employer, who desires and prefers to operate his plant on a non-Union basis might welcome the fact that a Union activist has done, or failed to do, something constituting clear ground for discharge. Still if a non-Union employee would equally have been discharged for doing, or failing to do, the same thing, then the true rule is that the employer is not to be convicted of violating the law upon discharging the Union employee. And further, as has been emphasized, the true rule is that the burden is on the Board to prove that such is not the case.

The Court is, of course, familiar with the relevant legal principles, but it would seem not amiss to summarize those which are particularly applicable to the present case.

" '. . . [I]t is specifically provided that no order of the Board shall require the reinstatement of any individual

or the payment to him of any back pay if such individual was suspended or discharged for cause, and this, of course, applies with equal force whether or not the acts constituting the cause for discharge were committed in connection with a concerted activity'."

• • •

"Many cases reaching their final disposition in the Courts of Appeals furnish examples emphasizing the importance of enforcing industrial plant discipline and of maintaining loyalty as well as the rights of concerted activities."

National Labor Relations Board vs. Local Union No. 1229, 346 U. S. 464, 473, 474, 74 S. Ct. 172, 98 L. Ed. 195 (1953)

"If discrimination may be inferred from mere participation in union organization and activity followed by a discharge, that inference disappears when a reasonable explanation is presented to show that it was not a discharge for union membership."

National Labor Relations Board vs. United Brass Works, Inc., 287 F. 2d 689, 693 (4th Cir., 1961)

"The Board may not 'substitute its judgment for that of the employer as to what is sufficient cause for discharge' (citation omitted). And discrimination may not be inferred from an employee's mere membership in a union (citations omitted). In every case the burden is on

the Board to prove that an employee's discharge resulted from his union activities."

National Labor Relations Board vs. Wagner Iron Works, 220 F. 2d 126, 133 (7th Cir., 1955)

"The mere fact that Medlin was active in the union can not alone support a finding of discriminatory discharge because there is here substantial evidence that the employer discharged him for cause."

National Labor Relations Board vs. Montgomery Ward & Co., 157 F. 2d 486, 492-493 (8th Cir., 1946)

"The Board is not permitted to substitute its guess, unsupported by evidence, for the declared purpose, intention or reason of the employer, and to thus convict the employer of an unfair labor practice."

National Labor Relations Board vs. Arthur Winer, Inc., 194 F. 2d 370, 374 (7th Cir., 1952)

"To conclude from such evidence that respondent discharged Wingate because of her union activities requires the pyramiding of inferences which has been so often rejected by the Courts.

. . .

"It must always be remembered that the burden of proving discriminatory acts by the employer is and remains upon the General Counsel . . ."

National Labor Relations Board vs. Miami Coca-Cola Bottling Co., 222 F. 2d 341, 344, 345 (5th Cir., 1955)

"If his [the employer's] explanation is a reasonable one, the onus is upon the Board to establish the falsity of this explanation and the truth of its own interpretation."

Martel Mills Corp. vs. National Labor Relations Board, 114 F. 2d 624, 631 (4th Cir., 1940)

"True it is that the Company discharged three employees who had been engaged in the strike. But discharge after participating in a strike without more is not conclusive proof that they were discharged *because* they had so participated. Granting that an inference may be drawn from the mere fact of participation followed by discharge that such participation was its cause, the inference disappears when a reasonable explanation is presented that participation in the strike was not the cause of their discharge."

Ohio Associated Telephone Co. vs. National Labor Relations Board, 192 F. 2d 664, 666 (6th Cir., 1951).

"In each case such membership may have been the cause, for the Union was not welcomed by the persons having authority to discharge and employ. If no other reason is apparent, union membership may logically be inferred. Even though the discharger disavows it under oath, if he can assign no other credible motive or cause, he need not be believed. But it remains true that the discharger knows the real cause of discharge, it is a fact to which he may swear. If he says it was not union membership or activity, but something else which in fact existed as a ground, his oath cannot be disregarded because of suspicion that he may be lying. There must be impeachment of him, or substantial contradiction, or if circumstances raise doubts, they must be inconsistent with the positive sworn evidence on the exact point."

National Labor Relations Board vs. Stafford, 206 F. 2d 19, 23 (8th Cir., 1953)

"Specifically we are in no doubt that the evidence completely fails to support the finding that William Robinson was discharged because of his membership in, and activity on behalf of, the union. On the contrary, it shows without contradiction or dispute that he was discharged for open and continuous insubordination and disobedience of orders, and the order requiring his reinstatement with back pay is itself an unfair labor practice and as such is prohibited by Section 10(c) of the act which provides, 'No order of the Board shall require the reinstatement of any individual as an employee who has

been suspended or discharged . . . for cause . . .' 29 U.S.C.A. §160(c)."

National Labor Relations Board vs. American Thread Co., 210 F. 2d 381, 383 (5th Cir., 1954)

It is respectfully submitted that if the Court will examine the evidence in the cases of the employee discharges here at issue, it will find that the Labor Board has drastically departed from these principles which should control and govern its findings of fact.

The Petitioner realizes that an examination of the facts relating to these discharges is a burden upon the Court. But the patience of the Court in such task is prayed. For there is otherwise no refuge and no protection against the errors and the injustices which are here revealed.

A. Analysis Of The Evidence Relating To The Discharge Of Employees

There follows now a brief summary and analysis of the evidence bearing upon each of the employee discharges at issue in this case. These will be discussed in the same sequence in which they appear in the decision of the Board's Trial Examiner (J. A. 66-149)[1].

Ben Surratt

Ben Surratt worked as a "service" man in the Company's Republic Plant No. 3, at Great Falls, South Carolina. He

[1] "J.A." refers to the printed Joint Appendix filed by all parties with the United States Court of Appeals for the Second Circuit, a copy of which is now on file with this Court.

bears, as noted above, the rather unusual distinction of having found favor in the eyes of the Examiner and the Board without being either seen or heard. For Surratt did not testify or appear at the hearing of his case, although Counsel for the General Counsel stated at various points during the hearing that he was expecting Surratt at any time (408-410, 418).

Surratt's principal tasks were to attend to warp changing and yarn "break-outs" on the looms in the Weave Room where he worked (144). He was discharged for failure to correct break-outs with reasonable efficiency and promptness (145). Supervisors Burt Dixon and Clifford Brannan testified specifically and in detail as to Surratt's continuing failures of performance in these respects (147, 149, 153, 155, 345, 346, 376, 378, 393-396).

The Trial Examiner does not point out or rely upon any evidence tending to refute the evidence that Surratt was guilty of such failures repeatedly and in excessive degree. Instead, the Trial Examiner opines that these grounds for discharge were "pretext only" and that "the real reason" for Surratt's discharge was his connection with the Union (J. A. 70).

The Trial Examiner says that "Surratt had not been issued a personnel action report prior to his name being posted as a Union member," and that "on July 22, immediately after . . . wearing his Union button to work, he was given a write-up" (J. A. 69). The most charitable thing that can be said of these comments by the Trial Examiner is that they constitute a highly inadequate narra-

tion of the evidence to which they relate. Surratt's name was "posted as a Union member" shortly after August 18, 1963 (J. A. 66). The uncontradicted evidence is that, thereafter, he received a written reprimand or Personnel Action Report, on February 3, 1964, another on June 25, 1964, and still another on July 22, 1964 (385).

At another point, the Trial Examiner says that Surratt and two other employees, shortly before Surratt's discharge, began wearing "T-shirts," with Union insignia on them, "at work," and that supervisor Carter "sent them home to take the insignia off." This is not a correct statement. There is no evidence that any supervisor ever sent Surratt home on account of his wearing any Union insignia or with any direction to remove any Union insignia. All the evidence on the point, even from witnesses for the Board's General Counsel, was to the contrary (85, 302-304).

In its Decision and Order, the Board admits the inaccuracies in the Trial Examiner's handling of the evidence referred to in the two preceding paragraphs, but the Board says that these are immaterial. If, however, these matters were immaterial, it seems reasonable to ask why the Examiner was discussing them.

In Surratt's case, the Trial Examiner devotes very considerable attention to reviewing various of the "findings" which he arrived at upon a hearing, in 1964, of a separate group of cases involving this Petitioner (Board Cases Nos. 11-CA-2180, et seq.). He says that at the earlier hearing there was testimony as to conversations between

Superintendent Melvin Smith and Assistant Manager Leland Burns and several employees, one of whom was Surratt. He declares that the employees' versions of such conversations "were not denied by either Smith or Burns" at the earlier hearing (J. A. 67). In this, the Trial Examiner completely ignores the testimony of both Burns and Smith (Transcript of prior hearing 965-967, 1933-1937. Respondent's Statement of Exceptions to Trial Examiner's prior Decision, pp. 12-13).

The Examiner invokes a finding from the earlier cases that Assistant Manager Burns had "characterized Walden" in these same conversations as a "damned ring-leader" in the Union (J. A. 67). However, Walden—and testimony in the earlier cases relating to him—has no perceptible bearing upon the present Surratt case. This account of an alleged statement by Burns with respect to Walden, the Examiner had enthusiastically accepted from a witness at the former hearing, one Hyatt, and now with equal enthusiasm stresses it in the present case—although this witness, in the prior hearing, admitted on cross-examination that in giving a complete account and written statement of his conversation with Burns, he never once mentioned in such statement that Burns had so "characterized Walden" (Transcript of prior hearing 350). And this same witness, in trying to explain why he never included in his written statement such alleged characterization by Burns, first said that he "was scared" of the Board investigator, and then later said that he hadn't put it in his statement because he supposed that he hadn't "remembered it" (Tran-

script of prior hearing 351, 352. Respondent's Statement of Exceptions to Trial Examiner's prior Decision, p. 12).

Yet the Examiner now harks back to such discredited testimony in the prior hearing, drags it into the present case, and upon it, piles remote and uoconnected inferences —to reach a "finding" that the Petitioner wrongfully discharged the employee now under consideration, namely, Ben Surratt.

Near the conclusion of the evidence relating to Surratt's case, and as Counsel for the Board recounted his perplexities as to Surratt's whereabouts, the Trial Examiner declared that "Surratt obviously would have to be here for him to have a case" (409-410). Yet the Examiner now forgets what he then saw "obviously," and awards the palm to Surratt in absentia.

Hubert Varnadore

Hubert Varnadore was a weaver at the Republic No. 3 Plant. He worked on the third shift. He was discharged because of the poor quality of his work, particularly in his failing to observe when his looms were weaving "seconds" or defective cloth (306, 347-348). His immediate supervisor, Clifford Brannan, testified that Varnadore's performance in this respect kept getting "worse"; that he didn't take any "interest in it," and that "it didn't look like he cared" (348).

On August 29, 1963, Varnadore received a written reprimand or "P. A. Report" on account of the deficient quality of his work. On March 30, 1964, he received another such written reprimand, on April 16, 1964, another, and on

November 11, 1964, still another (331-334, 348-350). Varnadore admitted not long before his discharge he was told by his General Overseer, W. M. Carter, that he would "be fired" the "next time" he "had a write-up" (107).

On the last night Varnadore worked, he allowed one of his looms to run for four to five hours weaving a "warp-wide" defect in the cloth, without noticing it or doing anything about it (307, 350-354). Brannan testified that Varnadore wouldn't have allowed this to happen if he had "cared anything about his job" (354). As of the time that Varnadore's shift ended, he had still not ovserved this running defect, but the weaver who operated the same looms on the succeeding shift, detected it promptly after the beginning of her shift and brought it to the attention of her supervisor (307, 316-317). The defective roll of cloth was removed from the loom, and when Varnadore came back to work on his next shift, it was shown to him "all the way back to where it started" (353). Varnadore admitted that this was done (119). Brannan then recommended to Carter that Varnadore be discharged (354). Carter had Varnadore come to his office. The "roll of cloth" was "sitting there in the office," and Carter asked Varnadore "if he wanted to see it again," and Varnadore replied that "he didn't" (309). At this time Varnadore was discharged (309).

Faced with this evidence, the Trial Examiner simply declares that he is "not persuaded" that "the cloth" which was showed to Varnadore "in fact came from one of Varnadore's looms" (J. A. 75). The Examiner observes that "Varnadore was not shown" this cloth "before it was

removed from the loom, nor was Brannan" (J. A. 75). As to this, however, the Examiner fails to note the simple fact that the running defect was caught by the weaver on the shift following Varnadore's, and that at this time both Varnadore and his supervisor, Brannan, had already left. The natural procedure at that point was to remove the defective cloth from the loom, put the loom back into production, and set aside the defective roll until Varnadore and his supervisor, Brannan, could see it upon returning to the Plant on their next shift (317).

It is further to be noted that although the Examiner declares himself "not persuaded" that the defective cloth was in fact Varnadore's, Varnadore himself seems not to have, nor to have had, any such question about the matter. He testified that he wasn't "saying" that "it wasn't" his cloth (128). He admitted that he had not "ever made any claim to anybody, anywhere, either at that time or since then, that this was not [his] cloth" (130, 309). But the Examiner does not hesitate to make the claim for him, though there is no evidence to support such a position.

Next, the Examiner raises question as to why the Petitioner discharged Varnadore, the weaver, on this occasion, but did not discipline the loom fixer, one Preston Greene (J. A. 75). As to this, it was explained that although it is likewise a duty of loom fixers to inspect cloth for running defects, it is not their task constantly to inspect the cloth, as is the case with respect to weavers themselves (320). Brannan pointed out that the time for such inspection by loom fixers was as promptly after shift change as possible, and that when loom fixer Greene made such in-

spection of the loom in question, it was soon after the beginning of the third shift—at which time the defects here involved had not begun to run (355-356). Brannan further called attention to the fact that on the occasion of Varnadore's last written reprimand, that is, November 11, 1964, Greene, the loom fixer, had received a written reprimand along with Varnadore—because, on that occasion, the defect was running at a time and under such circumstances that both Varnadore and Greene should have observed it (355).

The Examiner makes much of the fact that Carter referred to this occasion of Greene's being reprimanded as the same occasion on which Varnadore was discharged—whereas Brannan correctly pointed out, as the date on Greene's written reprimand confirmed, that the occasion on which Varnadore and Greene were both reprimanded was that of November 11, 1964, instead of March 16, 1965, when Varnadore was terminated (351, 358).

The Examiner incorrectly quotes Carter as "testifying that he could not recall any weaver whom he had ever previously discharged" (J. A. 77). What Carter actually testified, on this point, was that he could not "name the last" weaver who had been discharged "before" Varnadore (323).

Finally, the Examiner once more acclaims the testimony about Walden having been "characterized" as a "damned ring-leader" in the Union (J. A. 76). And not only was that testimony, as hereinabove pointed out, thoroughly discredited (Respondent's Statement of Exceptions to Trial

Examiner's prior Decision, pp. 10-12). In the present case, moreover, it has the character of very obvious and transparent coloring matter, for it is certainly without relevance to the discharge of Hubert Varnadore.

Juanita Faulkenberry

Juanita Faulkenberry was a weaver at the Company's Republic Plant No. 1. It is uncontradicted, and indeed the Trial Examiner found as a fact, that "Faulkenberry was not associated with the Union" (J. A. 78). And the Examiner recommended "that the complaint be dismissed as to Faulkenberry" (J. A. 78).

The Board, however, rules that the Petitioner must reinstate Faulkenberry, with back pay, because it believes that she was not discharged for cause, but on account of her having "given testimony" in an earlier hearing "unfavorable to the Petitioner" (J. A. 27).

Faulkenberry's foreman, Arthur Lee Justus, and her immediate supervisor, Simean A. Dawkins, testified that during the latter part of October, 1964, it became necessary to reduce, by three, the number of weavers in the Weave Room. They both stated that Mrs. Faulkenberry was one of the three weavers who were terminated at this time, because the quantity of her production was very "low" (46, 48, 297). Mrs. Faulkenberry, in testifying, admitted that her production had "got down very low"—"real low"—and indeed was "terribly bad" (70, 71, 72).

The evidence was undisputed that, on the occasion of Mrs. Faulkenberry's termination, the number of weavers

in the room was reduced from 63 to 60, and was never expanded above 60 after that (230).

The only significant controversy of fact in Mrs. Faulkenberry's case centered around the question as to whether her low production, in comparison to other weavers, was due to her having difficult styles of fabric and inefficient loom fixers assigned to her (J. A. 23, 24). As to this, both Justus and Dawkins testified that other weavers who had the same styles and fixers had higher production (234, 282). Justus stated that he had "tried Mrs. Faulkenberry on several sets of looms" (252). Dawkins testified that she had "been a low production weaver" all along and "ever since" she first came under his observation as a supervisor (285). As Dawkins put it:—Mrs. Faulkenberry "had just gotten so slow that she just couldn't keep up a set of looms. It didn't matter where, or what set of looms she was on, or what—in most cases—what fixer she was working with, her production remained low" (297).

The Board "finds," however, that since Mrs. Faulkenberry gave testimony in an earlier hearing, in the case of one Ralph Harrison, the Petitioner discharged her on that account.

As the Trial Examiner points out, however, Mrs. Faulkenberry's "testimony at the first hearing was relatively innocuous" (J. A. 78). In his earlier ruling in the Harrison case, the Examiner had barely mentioned the testimony of Mrs. Faulkenberry. Indeed, the Petitioner, in the Ralph Harrison case, had relied upon Mrs. Faulkenberry's testimony as being favorable to it (Board's brief in the earlier case, p. 54).

Still further, it is to be noted that Mrs. Faulkenberry's testifying in the Harrison case had occurred many months prior to her termination. And finally, it should be remembered that at the time Mrs. Faulkenberry was terminated, there had been no ruling against the Petitioner in the Ralph Harrison case—to say nothing of the fact, as pointed out above, that the Petitioner considered Mrs. Faulkenberry's testimony in that case to have been favorable to the Petitioner.

But in the face of all this, the Board chooses to "believe" and therefore "finds" that the Petitioner's explanation of Mrs. Faulkenberry's termination is false and that, in truth, she was discharged because she testified in the Harrison case.

John Fulbright

John Fulbright was a loom fixer in the Company's Dunean Plant, at Greenville, South Carolina. On June 11, 1964, a leaflet or pamphlet became very widely distributed in the Weave Room, where Fulbright worked, and during his shift.

Allan Scruggs, Fulbright's immediate supervisor, testified that he found copies of this leaflet "on the bulletin board, stuck on posts, on the shuttle boards, on the looms, on loom handles, lying on work benches, and in general just all over the entire job" (1108). The result was that a great deal of discussion about the leaflet occurred, and there was a general disruption of work throughout the shift (1108). Scruggs described the situation as "a state of general confusion" (1115). He testified that he saw "between

75 and 100" of these leaflets over the Weave Room during the shift in question (1108, 1126).

Scruggs further testified that the situation was entirely different from the ordinary occasions on which Union leaflets were distributed to the employees at the Plant entrances (1172). Usually, on such occasions, individual employees would put such leaflets in their pockets (1205). One or more of such leaflets would thereafter occasionally be seen in the Plant. But in this instance, "the Weave Room was just flooded with them" (1172). "They were on posts, on the bulletin board, on the looms, people were gathered up looking at them and talking and laughing and snickering about them" (1172).

C. J. Pride, General Superintendent of the Plant, testified that "it was a rather disruptive thing" and "did attract a lot of attention from the people" (1176). He stated that "he had never known" before "of an occasion" of anyone "bringing leaflets into the Plant and distributing them like that before" and that this was "the first time" that "anything" of this sort had been done "on such a scale as that" (1181, 1205).

This difference between the situation, and other instances of occasional leaflets being seen in the Plant, seems to be one which the Examiner and the Board are unable, or unwilling, to comprehend (J. A. 33).

Supervisors and management investigated the matter and arrived at the conclusion that "Fulbright was the one that had brought them to the Plant and had caused or gotten other people to distribute them on the job" (1147).

Pride testified that "everything that was learned pointed up that it was Fulbright who had instigated and brought the leaflets in the Plant, and was mainly responsible for the distribution of them in the Plant" (1178-1179).

Fulbright himself admitted that "the Union organizer at Dunean Plant" gave him "about 160 or 170" of these leaflets, and that he, Fulbright "took approximately 60 or 70" of them "into the Plant at work time" (722, 751). This leaflet was not distributed to the employees at the Plant entrances, as was normal and usual (1159).

Billy Ray Hiott, a reed cleaner, in the Weave Room, testified that Fulbright asked him if he "could put a stack of" the leaflets in Hiott's locker, and that this was done, but that he, Hiott, later told Fulbright that he would like for Fulbright to "get them out of there" (1237-1238). Hiott further testified that Fulbright talked to him about "scattering them out over the job," but that he, Hiott declined to do so (1239). Hiott stated that he later saw Fulbright "put one up" in "the water house on the bulletin board"; that Fulbright "had some more in his locker; and he took them and he put some on our job down there on a loom handle" (1239-1240). Hiott's testimony was that among the "248 looms" where he worked, there were "pretty close to 100 leaflets" scattered around, "on the looms and on the posts and on the wall back there; there was some hanging on the wall," and on "the work benches" (1240-1241).

Hiott further testified that "there was a lot of difference" with respect to "the quantity or amount of leaflets" scattered over the Weave Room on this occasion as compared

to the usual situation after leaflets had been distributed to the employees at the Plant entrances (1262). He stated that "very seldom did you see any of them" in the Plant on other occasions, but that in this instance, "everywhere you walked you'd see one" (1262).

Willie O'Bryant, a weaver, testified that he saw Fulbright "in the water house" with "some" of the leaflets "in his pocket, some in both pockets, giving them out to certain people around in the water house"; that he later saw the leaflets "scattered all over the Weave Room, on shuttle boards, on the wall, on posts" (1268). O'Bryant said that Fulbright had the leaflets "all night"; that "he was putting them in rolls of cloth, sticking them down and letting them go down in a roll of cloth, or sticking them on the shuttle board, and at twelve o'clock," which was the end of Fulbright's shift, "he got rid of what he had by putting them on the work benches of the third shift loom fixers" (1268).

Supervisor Scruggs testified that another employee, Ronald Boling, told him "that Fulbright had given him a bunch of" the leaflets, and that upon his, Scruggs, asking Boling "what he had done with them," Boling "said he had hid them downstairs, and he went and got them, and they were carried to Mr. Pride's office" (1109-1110). Scruggs recounted that Boling stated that "at the time" Mr. Fulbright "told him not to be caught with those leaflets, not to let anybody see him give them out, and put them on the looms and on the bulletin boards" (696, 1110, 1150, 1151).

Scruggs likewise testified about Billy Ray Hiott's coming to him and stating "that there was a stack" of the leaflets put in his, Hiott's locker, and that he, Hiott, "went to Mr. Fulbright and told him that he didn't want any part of them, and asked him to take them out," and that Fulbright "told him" that he, Fulbright, "would take them out of" Hiott's locker (697, 1111). Scruggs testified with respect to Boling's telling him that "Fulbright had called him," Boling, "a dirty son-of-a-bitch," and that he, Fulbright, "would get even with him," Boling, for "telling where" the leaflets "came from" (1110, 1134).

After spending some days in gathering what evidence they could on the whole matter, Fulbright's supervisors, together with Superintendent Pride, decided that Fulbright should be discharged, and Fulbright thereupon was terminated.

The Trial Examiner declares that "there is no evidence" that Fulbright did anything toward getting the leaflets spread around over the Weave Room, except that he "had a leaflet in the washroom which was passed from employee to employee, and that he helped post one on a bulletin board where employees posted various announcements of interest" and except that "he gave" some to Boling, at Boling's request, "cautioning" Boling "not to pass them out during working hours" (J. A. 80). This is not a correct statement. There was ample evidence of Fulbright's doing a great deal more than this, as is outlined above.

Another amazing pronouncement by the Trial Examiner is his statement that "it should have been obvious that it

was the individual employees who had accepted" the leaflets in question "at the gate and carried them inside" (J. A. 81). On the contrary, upon all the evidence delineated above, it was obvious to supervision and management that this is not what had happened.

Still further, with respect to Boling's report to Scruggs as to Fulbright's cursing and threatening him, the Examiner delivers himself of the ukase that the "Petitioner is not the censor of the language employed by one employee in addressing another, or the custodian of their ethics" (J. A. 82). The Examiner thus decrees that the employer must permit the employees in the Plant to curse and threaten each other without limit, let or hindrance.

The Trial Examiner says that "according to Scruggs, the only difference between the distribution on June 11, 1964, for which Petitioner discharged Fulbright, and previous distributions, was that the employees carried more into the Plant on June 11" (J. A. 83). This is indeed a striking misstatement of Scruggs' testimony and of the Respondent's position. Fulbright was not discharged because "the employees carried more" leaflets "into the Plant on June 11," but because the Petitioner investigation indicated that he, Fulbright, had carried a very large quantity of leaflets into the Plant and had been the source and cause of their being spread all over the Weave Room, to the distraction and confusion of the employees in the Weave Room throughout an entire shift.

Still further, the Examiner repeats that "certainly there is no evidence" that Fulbright "distributed the leaflets in-

side the Plant" (J. A. 83). This is a plain misstatement of fact. There was a plenitude of such evidence, as hereinabove outlined.

Oliver Durham

Oliver Durham worked as a cloth doffer in the Weave Room. At the time of his discharge, according to his own testimony, he had been in the employment of the Petitioner for approximately two years—not "several years," as the Trial Examiner states (936, J. A. 84).

John Gero, Assistant Overseer, D. D. Cheek, Assistant Overseer, and Claude Long, Overseer, all testified that Durham had been criticized many times about his failure to cut the cloth rolls off the looms at the proper point and also his failure to cut off sample swatches of the cloth (1496, 1502, 1514-1517, 1533). On August 20, 1964, Durham was given a written reprimand on account of his repeated deficiency in these respects (1498).

Durham had a further failing of staying away from his job too often and too long (1502, 1533, 1537). The incident which precipitated Durham's discharge was an occasion on which he had been missing from his job "about 25 minutes," and his immediate supervisor went looking for him and found him in the water house (1538). On this occasion "his job was behind," and Cheek stated that that was why he "was looking for him" (1542). Cheek's testimony was that Durham "had cloth that had gone over a good bit, and was supposed to have done been doffed" (1542). Cheek's testimony was that Durham "was the worst" employee he had "by far" with regard to "staying off his job and being away too long" (1566).

Durham admitted that during the Summer of 1964, he "was working at another job" with another Company, in addition to his job with the Petitioner (951). He also admitted that on the occasion immediately preceding his discharge, his supervisor, Cheek, told him that he, Cheek, had "heard" that he was leaving his job and going "and sleeping" (951).

The Trial Examiner says that "it is nowhere asserted that Durham's work was not caught up" on this occasion immediately preceding his discharge (J. A. 90). On the contrary, it was definitely so asserted by Cheek, as set forth above.

The Examiner undertakes to make a great point of the fact that, according to Cheek's testimony, when he found Durham in the water house on the final occasion, he also found another cloth doffer, John Cobb, there, and that, according to the uncontradicted testimony of both Cobb and Durham, Cobb had been in the water house longer than Durham (J. A. 87). But this does not refute Cheek's testimony that Durham had been away from his job for 25 minutes (1538). It was of no moment whether he had spent this 25 minutes in the water house or in loafing elsewhere.

The Examiner points out that "Durham and Cobb are Negroes," and he becomes considerably exercised about their using a different water house from the white male employees (J. A. 86, 92). The Examiner seems uncertain as to whether he is trying the Petitioner for "civil rights" discrimination or for violation of the National Labor Rela-

tions Act. This dilemma he resolves by enthusiastically concluding that "both" Durham and Cobb "were discriminated against in the use of segregated washroom facilities," and that Durham was discriminated against "doubly" (J. A. 92).

Willard Page and Junior Hulsey

Willard Page and Junior Hulsey worked at "picker" machines in the Carding Department. Page's job was feed the pickers, and Hulsey was the "change" man, who cleaned the pickers (974). They were discharged because of the following circumstances. On the night of September 29, 1964, they walked off the job and left the Plant "ten or fifteen minutes before" quitting time (976, 978, 1575). Upon returning to work the next night, September 30, 1964, they were warned by their immediate supervisor, Dwight Hawkins, not to do this again (977, 1576). But on the same night, that is, September 30, 1964, they both quit work and left the Plant again "about fifteen minutes" before their shift ended (974, 1577, 1578).

Upon returning to work on the next day, October 1, Page and Hulsey were each asked to come into the office. Hawkins testified that he told Page that he tried to locate him before quitting time "last night" and "couldn't find" him, and that thereupon Page called him, Hawkins, "a damned liar" (1578, 1607). Page admitted that on this occasion, and "before he was fired," he said to Hawkins "you're a liar" (1001, 1007).

Page admitted that shortly thereafter, while supervisors Claude Vaughn and Jack Tatham and Junior Hulsey and

another employee, Hall, were in the office, he, Page, called Hawkins "a son-of-a-bitch and a bastard and everything else" and "everything" he "could think of" (989, 1002-1003). Hawkins testified that Page also told him that he, Page, "was going to smash [his] head in" and "break [his] legs" (1582-1583). Hawkins testified that Hulsey also, on this occasion called him, Hawkins, a "son-of-a-bitch" (1580, 1608). The Trial Examiner takes no note, and makes no mention, of any of this.

Page and Hulsey denied leaving the Plant early on September 29, denied being reprimanded about this, and denied leaving the Plant early on September 30 (J. A. 95)—although other employees, two of whom were non-supervisory, testified as follows.

Joe Cothran, a machine fixer, stated that, on the last night Page and Hulsey worked, he saw them both leave "at least ten minutes" before "quitting time," and that upon Hawkins' "checking the job" and asking him, Cothran, if he had "seen them," Cothran told Hawkins that he had "seen them leave" (1624-1625). The Examiner says that Cothran "did not know where they went" (J. A. 96). This may be true, but Cothran did know that they departed from their work station and failed to return, and that this left "the job in a mess" and caused additional work for him (1625).

Luther Mitchell, Assistant Overseer, testified that on the last night Page and Hulsey worked, he helped Hawkins in trying to find Page and Hulsey prior to quitting time, but that they were not able to locate them (1641-1642).

And Bobby Pressley testified that he worked on the third shift, following Page and Hulsey, and that on the night of September 30, he came into the Plant "between five and ten minutes" before the end of the second shift, and that on the way into the Plant, he passed Page and Hulsey "sitting out on the bench," which is "between the Mill and the Mill gate down there" (1615-1616).

None of this daunts the Examiner and the Board, however, and they "find" without any difficulty that Page and Hulsey were discharged on "pretext" only (J. A. 97).

W. O. Epps

W. O. Epps was a "tie-in" helper. He was laid off because of reduction in "spun yarn" work and a consequent reduction in need for tie-in helpers (1381).

At the time of his lay-off, Epps' period of employment had been a little less than two years (839). The Examiner refers twice to "Epps' 42 years" of employment with the Petitioner (J. A. 97, 98). As Epps himself testified "a lot of times" he had "quit, more than anybody else," he thought (838).

Epps further testified that at the time he was laid off, Earl Lollis, Superintendent of Weaving, explained to him that the Company "didn't have as much spun rayon on at that time" as "when he put me on the job" (839). Epps further stated that insofar as he knew, the Company had not "put anybody else" on his job since he had "been laid off" (839).

Lollis testified that prior to the time of Epps' lay-off, there were three tie-in helpers on the first shift, three on

the second and two on the third (1381). At the time of Epps' lay-off, these were reduced to two tie-in helpers "on each" shift (1382). Lollis further stated, and it is undisputed, that this reduction in the "tie-in" personnel has since continued (1382, 1387).

The Examiner remarks that supervisor Wallace Grier "had no knowledge of any impending reduction in the number of looms or any need for it" (J. A. 100). The Examiner misunderstands the nature of the change in production which brought about the lay-off. There was not a reduction in the number of looms, but a reduction in the use of spun yarns on the looms, which in turn reduced the need for "tie-in" personnel. Grier did have "knowledge" that the Weave Room "was coming down on spun" yarns, and so testified (1405).

Lollis testified that at the time of Epps' lay-off, there were two tie-in helpers who had less seniority on the job than Epps (1382). These men were Johnson and Massingale. Lollis emphasized that both of these men were "superior" to Epps "in running the job" (1382-1383). At the time of the reduction in the "tie-in" help, Johnson was placed on a "lease out job" on the "third shift" (1384), that job having "come open" because the man who had held it had just gone into "military service" (1385). Lollis stated that he did not place Epps on this job because it required work on "fine yarns," and "Epps' vision" was "bad" (1383). Lollis further pointed out that Johnson "could operate a tie-in machine," whereas he never knew of Epps ever being able to do so (1385). Confirming, however, the necessity of these moves, Lollis pointed out

that Johnson's pay was cut as a result of his job change (1409).

The Examiner points out that Epps' "name appeared on the leaflets which the Union distributed at the Plant" (J. A. 97). It is to be noted, however, that exactly the same thing was true with respect to Massingale, the other tie-in helper who had less seniority than Epps and who was retained on the job of tie-in helper, when Epps was laid off (1409).

The Examiner says that he "has difficulty understanding" why, at the time of the reduction in the "tie-in" personnel, Epps was not put at other work instead of being laid off (J. A. 99). Epps testified that he had formerly run a "smash" hand job for a number of years and could have done that (839). Lollis pointed out, however, that he had taken Epps off the "smash hand" job, because "he just could not see well enough to draw those ends in, in the correct places" (1383). Epps admitted that the "smash hand" work gave him "the headache" (847). He further admitted that when he was laid off, he did not ask Lollis anything "about going on any other work" (856). Lollis, likewise, testified that at the time of the lay-off, he "didn't have anything else open, anything that [he] thought Mr. Epps could do" (1384). He further stated that Epps did not "in any way specify" to him "anything else" that he, Epps, "thought he could do" (1384).

Jake Owens

Jake Owens for about two and a half years prior to his discharge had been a "lead man in the Warehouse" (1081).

Although he had been a satisfactory employee in the Warehouse prior to his being promoted to the position of lead man, he did not prove to be satisfactory as a lead man and was discharged on that account (1778-1779).

Owens' supervisor, Clarence H. Thomas, who was Overseer of the Warehouse and Yard, testified that "around the first of the year," 1965, he began to discuss Owens' "job with him, and let him know that he wasn't doing the job" that he, Thomas, thought that Owens "was capable of doing" (1766). Thomas stated that he also "told him if he didn't run his job, that we would have to make some changes" (1766).

With respect to the circumstances immediately preceding Owens' discharge, Thomas testified that in April, 1965, he instructed Owens to move some "cans of sliver that had been received" into "the Warehouse, so they wouldn't be in the way of shipping" (1767). Thomas said that "the next day" he "went out to the Warehouse and the cans were still there," and again he instructed Owens to move them, Owens meanwhile admitting that the cans had been in the way "all during shipping yesterday" (1767). After this second instruction, Owens did move the cans (1767).

Thomas testified that shortly thereafter, he and his superior, James W. Corbett, decided that approximately 150 cans of sliver or yarn, which were scattered around in the Warehouse, would have to be moved and "topped" and stacked, so as to make room for yarns which were to be brought into the Warehouse (1768). On April 27, Thomas informed Owens of this decision and directed him to move

and top and stack these 150 cans of sliver (1768, 1744). The next day, Thomas "went out" to the Warehouse, and found that Owens "hadn't done a thing to the cans" (1768). Thereupon he repeated to Owens the instructions which he had given Owens on April 27 (1770, 1775, 1788). On May 3, Thomas and Corbett went out to the Warehouse and found that Owens still "hadn't moved the cans," and that "they were still just where they were on April 27" (1769). The cans were "scattered around" in the Warehouse "from the entrance all the way to the back of the Warehouse, and just about a third over in the middle of the floor" (1776). After this visit by Thomas and Corbett, on May 3, Owens did proceed to move and stack the cans (1776).

Thomas testified that on May 5, he told Owens that "we'd had an awful lot of complaints" about "the condition of the platform" at the "lowest section of the Warehouse" (1776). He instructed Owens that this platform must be "cleaned up," and that the "trash cans" on the platform must be "emptied and the tie bands put in the scrap bin" where tie bands were supposed to be kept (1776-1777). Owens, however, failed to "clean anything off the platform" (1777). Thomas stated that he thereupon decided to ask Corbett's permission to discharge Owens (1777-1778). Corbett gave his consent to this, and Thomas then went to the Warehouse and discharged him (1778). Thomas stated that, at the time of this final discussion with Owens, he reviewed Owens' deficiencies with him in some detail and pointed out the respects in which he, though a lead man, was failing "to get the work done" (1783).

Owens repeatedly denied all of this, claiming that he had never been criticized in any way about his work and had never failed to fulfill Thomas' instructions at any time or in any way (1089, 1092, 1096). In this, the Examiner does not seem to believe Owens, for he accepts Thomas' account of Owens' successive failures to follow instructions with respect to the 150 cans of sliver (J. A. 101). The Examiner points out, however, that Owens was discharged two days after he had finally "stacked the cans" as "Thomas wanted them" (J. A. 102). The Examiner overlooks the final incident, in which Owens, on the day he was discharged, failed to "clean anything off the platform" after he had been pointedly and specifically instructed to do so (1777).

The Examiner finds fault with the Petitioner for discharging Owens, instead of demoting him to one of the jobs he formerly held before he became a lead man (J. A. 102). In this, the Trial Examiner ignores the consideration that employers usually, and reasonably, deem that an employee having once been promoted, it is not ordinarily wise or advisable to move him back down the scale (1779).

The Examiner also stresses the fact that Owens was discharged, without ever having received a written Personnel Action Report (J. A. 102). As to this, Thomas pointed out that "over the years" that he had "been in a supervisory position," he had discharged more employees "without writings" of any sort than with "writings" (1814).

Jake Owens' case presents a striking example of the Examiner's and the Board's cavalier handling of evidence.

In order to sustain their finding that Owens was discharged for "Union activity," the Examiner and the Board rely entirely upon the following matter. Owens testified that on a Sunday afternoon, some days prior to his discharge, he attended a Union meeting in the nearby town of Piedmont. There was evidence that Ralph Compton, a foreman in the employment of the Petitioner, rode though the town of Piedmont, in an automobile, on the same afternoon.

It is undisputed that Compton was not, and had never been, a supervisor over Owens. Compton testified that he did not know Jake Owens; that he did not know of any Union meeting being held in the town of Piedmont on the afternoon in question; that he and his "wife and a neighbor and her husband" were "out on a Sunday afternoon ride"; that insofar as he was aware, he did not see Jake Owens on that afternoon and would not have known Owens if he had seen him; and that he never made "any report or statement to anybody connected with the Company" that he "had seen Jake Owens" or "anybody resembling Jake Owens" (1825-1827). There was no evidence contrary to this and no contradiction of this testimony on the part of Compton.

But the Examiner blithely "finds" that "Compton saw Owens" and that Compton "knew the occasion to be a meeting of the Union" and that there was some report by Compton to someone "at the Mill" that he, Compton, "had seen Owens at the meeting" (J. A. 101). The Examiner also says that Compton "did not deny" that "he knew" that there was a Union meeting being held in the

town of Piedmont on the afternoon in question (J. A. 101). This latter is, of course, a flat misstatement of Compton's testimony, for, as noted above, Compton testified exactly to the contrary. The Board refers casually to Owens being "seen at the Union meeting" (J. A. 37).

Here is a clear case of a crucial "finding," made without any affirmative evidence whatever to support it, and in the face of uncontradicted evidence to the contrary.

Still further, the Board says that, on the Monday following the Sunday afternoon in question, James Corbett, the Manager of the Warehouse, where Owens worked, "interrogated Owens about Owens' attendance" at the "Union meeting held the previous day" (J. A. 36[1]). This is a most egregious mishandling of the evidence—hardly worthy of a slight-of-hand artist. Nobody testified that Owens was interrogated "about" his "attendance" at the "Union meeting held the previous day." Owens' own testimony was that Corbett came by while he, Owens, "was sitting down," and that he told Corbett that his "knee was hurting," and that Corbett asked him if he hadn't "gone to the doctor yet" and if he didn't "stay home and lay down" the preceding day, Sunday, and that upon his, Owens, telling Corbett that he "went to Church"

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[1]The Examiner says that "this conversation took place about 7:30 A. M.," and the Examiner points out that "according to Owens," this was an unusually early time "for Corbett to be in the Warehouse" (J. A. 100). Again, the Examiner misstates the evidence. Owens himself testified that when he saw Corbett in the Warehouse at 7:30 in the morning, nothing was said to him "at that time," and that his conversation with Corbett was "later that day" (1084).

instead, Corbett asked him what Church he attended, and that Corbett then "walked off and didn't say no more" (1084-1085, 1090). The testimony of Corbett was to the same effect (1820-1821).

Yet upon this, and this only, the Board blandly "finds" that "Corbett interrogated Owens about Owens' attendance at a Union meeting held the previous day" (J. A. 36). What the Board means, of course, is that despite the state of the record outlined above, it thinks that it knows what Corbett had in his mind as he talked to Owens, and therefore the Board is willing to make the flat declaration that "Corbett interrogated Owens about Owens' attendance at a Union meeting held the previous day." Such is the accuracy of the Board's statements of the evidence and such is the character of the "findings" which the Board asks this Court to accept and endorse.

Arthur Dean

Arthur Dean worked as a trucker at the Company's Black Hawk Warehouse, in Greenville, South Carolina.

The Superintendent of the Warehouse, R. W. Griffin, testified that on July 15, 1964, approximately two weeks before Dean was discharged, it was reported to him, Griffin, by Ray Loftis, foreman, that Dean had walked off his job approximately an hour before quitting time (443, 528). Billy McKee, foreman, testified that he saw Dean leaving his work on this occasion (577, 579). Dean admitted that he was reprimanded by Griffin on account of this incident (486).

Griffin testified that two days later, that is, on July 17, Ray Hinton, foreman, reported to him that Dean had walked off the job again, this time also approximately an hour before quitting time (445, 528). Griffin stated that on this occasion Dean was reprimanded by Hinton (529). Hinton testified that he saw Dean leave the job on this second occasion and that he reprimanded Dean about it (594).

The testimony of Griffin, Hinton and McKee was to the effect that, on these occasions, Dean was working with a crew at a location, called the "Commerce Service Warehouse," some distance away from the Black Hawk Warehouse; that the regular quitting time was 5:00 P. M.; that the usual and proper procedure was for all of the crew to leave the Commerce Service Warehouse shortly before five o'clock and travel by truck back to their regular place of work, the Black Hawk Warehouse, and there check out; and that Dean's misconduct, on the two occasions in question, was that he left the Commerce Service Warehouse approximately an hour early, took a short cut "across a field" on foot to the Black Hawk Warehouse. Dean admitted that he did cross the field on one of these occasions and did not know of anybody else ever having done this (477).

Dean testified that there was no second occasion, as claimed by Griffin and Hinton, and that on the occasion when he did "cross the field," it was at approximately the regular quitting time and that he did not "go over" to the Black Hawk Warehouse at all (481, 485).

In this, however, Dean is completely refuted by his time clock cards, which were placed in evidence by the Respondent, and which showed that on July 15, he punched out at the Black Hawk Warehouse at 4:04 P. M., and that on July 17, he punched out at the Black Hawk Warehouse at 4:06 P. M. (535). These time clock cards not only contradicted Dean's testimony that he did not return to the Black Hawk Warehouse on July 15, but they also conclusively established that he left work approximately an hour before the regular quitting time on each of these days.

The Examiner, strangely, refers to the July 17 incident, but makes no mention whatever of the July 15 incident (J. A. 110). He says that "according to McKee" Dean left his work at the Commerce Service Warehouse at "about 4:45 P. M." (J. A. 110). In fact, McKee said no such thing. His testimony, on the contrary, was that he "saw Dean walking across the field" at "a little before four" (577). Moreover, McKee testified, and there was no evidence to the contrary, that he was not present on the occasion of the July 17 incident, which the Examiner refers to, but that he, McKee, was only present on the occasion of the prior incident, which, as has been noted, took place on July 15 (579).

Still further, the Examiner says that on the occasion of the July 17 incident, McKee "told Dean not to do this again" (J. A. 110). Not only is this incorrect, in that McKee, as pointed out above, was not present at the time of the July 17 incident, which the Examiner says he is referring to. The Examiner is also completely inaccurate

in saying that McKee reprimanded Dean. Griffin testified that he reprimanded Dean on the July 15 occasion, and Hinton testified that he reprimanded Dean on the July 17 occasion. Dean testified that Griffin reprimanded him on the first occasion. Nobody, on either side, ever testified to what the Examiner finds, namely, that McKee reprimanded Dean.

The Examiner goes on to say that "according to McKee" Dean did not commit the same offense again (J. A. 110). McKee said no such thing at all. He merely testified, as pointed out above, that the only occasion on which he saw Dean leaving work before quitting time and "crossing the field" was on the first occasion, July 15, (575). He certainly gave no testimony that Dean did not commit the offense again.

Finally, the Examiner climaxes the maze of his inaccuracies with respect to these two incidents by declaring that "it is not contended that Dean lost any production time in doing as he did" (J. A. 110-111). It is indeed difficult to understand how the Examiner comes forward with this pronouncement, since the Petitioner's witness definitely were contending that, on both of the occasions in question, Dean had left his work approximately an hour before quitting time, and approximately an hour before the rest of his crew quit work, and that he "punched out" approximately an hour before he should have—as the time clock cards themselves confirmed.

With respect to the incident which finally precipitated Dean's discharge, the evidence was that this occurred on

July 31 (J. A. 107). J. A. Adams, foreman, testified that, on this occasion, Dean was working in the main Black Hawk Warehouse. Adams stated that he had crews moving cotton bales out of the Warehouse for shipment; that he sent a driver and a helper on an "extractor" machine from Room No. 7 to Room No. 8—the task of the extractor operator and his helper being that of removing certain bales from the stacks and setting them in the aisles (629-632). Adams testified that with these two men, he also sent Dean, as a hand trucker—his task being that of moving the bales from the aisles, after they had been set there by the extractor, out to the shipping platform (629-632). Adams stated that approximately a half hour after he had sent these three men into Room No. 8, he went into that room and found approximately thirty bales of cotton sitting in the aisles—they having been pulled from the stacks and set into the aisles by the extractor operator (629, 631). Yet Dean, as Griffin the Superintendent specifically testified, had not moved "any" bales at all out from the aisles or to the shipping platform (573).

Both Adams and Griffin testified that at about this time Griffin came up; that Adams explained the situation to him; and that as he was doing so, Dean came walking "up the platform" (632). Griffin then had Dean to go down to "the office," and Dean was there discharged by Griffin (447-448).

As bearing on the veracity of Dean, it is to be noted that Dean insisted that it was Hinton who, on the day of his discharge, told him "to go" to "the office," where

Mr. Griffin shortly thereafter discharged him (492, 493). It was again established, however, by time clock cards, which the Petitioner introduced into evidence, that Hinton—as he himself also testified—was not even at the Warehouse during that week, but was away on vacation (533, 536, 596).

The Examiner cavils that Adams could not have known exactly when the three man crew went into Room No. 8 (J. A. 108). On the other hand, Adams certainly was in a position to know, as he testified, that it was approximately a half hour from the time he told the three men to go into Room No. 8 until the time when he, Adams, went himself into Room No. 8. Furthermore, Adams and Griffin could certainly know, as they testified, that when they respectively came into Room No. 8, they found, as pointed out above, that the extractor operator had pulled out approximately thirty bales of cotton from the stacks and set them in the aisles, whereas Dean had not trucked a single bale out to the shipping platform.

James Rosemond

James Rosemond was the operator of a "Perry hook" machine in the Black Hawk Warehouse. The only claim in his behalf is that after testifying in a previous hearing, he was wrongfully denied overtime work (J. A. 114).

At the hearing, it first appeared that counsel for the Board was contending that after Rosemond testified, he did not get as much overtime work in relation to others, on the same kind of job, as he had received, in relationship to such other employees, prior to his testifying. As

to this, however, witnesses for the Board were alternately certain and uncertain. For example, Harold Robinson, a witness placed on the stand by counsel for the Board testified, with respect to Rosemond and the other employees doing the same sort of work as Rosemond, that he didn't "know which one of them actually got the most overtime work," either during the period before or after Rosemond's testifying (516).

In any event, the Petitioner introduced into evidence a tabulation, of time clock cards, showing that during the year immediately following Rosemond's testifying, he received as much overtime as did the other employees who were engaged in the same sort of work as he (616).

Thereupon, counsel for the Board insisted that the only thing pertinent was whether, after testifying, Rosemond continued to get substantially as much overtime work as he had prior to his testifying (620-627). The Petitioner then introducd into evidence a tabulation, of time clock cards, showing that, during the year prior to his testifying, Rosemond received an average of 45.29 hours of work per week, and that during the year immediately following his testifying, he received an average of 44.53 hours of work per week (677-678, 681-682).

It thus became obvious that the case in behalf of Rosemond was, at the most, not a mountain, but a molehill.

Frank Wojeck

Frank Wojeck was an air conditioning mechanic at the Company's Slater plant, in Slater, South Carolina (2607).

His supervisor was Andrew Dempsey, the Plant Engineer (2607).

Dempsey testified that "about six weeks" prior to Wojeck's discharge, as he was going "through the Finishing Department" he came upon a "number of people congregated" behind the "No. 9 and No. 10 range"; that they were "talking and jabbering"; that three of them, including Wojeck, were employees under his supervision; that he had "told them at a previous Monday morning meeting" that "he did not want any more" of this congregating "in this area"; and that on this occasion he told them "somebody's going to lose their job" if this did not stop (2608). Dempsey stated that two of the three men who were under his supervision explained to him why, they had occasion, because of their work, to be in this area, but that Wojeck did not "ever explain what he was doing there," and that Wojeck's work was such that he did not have "any business" in "that area" (2609).

Dempsey's testimony was that on the day that he discharged Wojeck, he received a deluge of complaints "from every direction" with respect to Wojeck's traveling around over the Plant, under such circumstances that he was not discharging his own duties, but was accosting and "bothering" other employees at their work (2609).

Dempsey stated that as he started the "day off that morning," William Lybrand, the Superintendent of Finishing, came to him "in the main office" and told him that the congregating "was starting up again" around the "No. 9 range," and that Wojeck "was bothering" employees in

this area, which was under Lybrand's supervision, and that he, Lybrand, "wanted" him, Dempsey, "to do something about it" (2619). Dempsey testified that he then started looking "for Frank Wojeck," but didn't find him "at the time" (2610).

Dempsey's testimony was that shortly thereafter he had to go "out of the main building" to "a lower building that was off limits to all personnel in the Plant," other than those who had special business there, and that while he was down there, Wayne Garrett, who was supervisor in that area, insisted on talking to him "for a minute" and complained to him that "Frank Woject was down in his area, and bothering his people, interfering with his people" at work (2610, 2611). Dempsey emphasized that Wojeck had no "work duties in that area," except and unless he had received a special "service" call to go there, and that on this day there definitely was no such service call (2611).

Next, said Dempsey, he was informed by his Assistant, Paul Sheriff, that King Bramlette, Weave Room supervisor and Charles Finley, Cloth Room Overseer, were "trying to get in touch" with him (2611). He stated that after he "got back from lunch," he talked with Finley, and that Finley complained to him that Wojeck "was interfering with his people's work," and that very shortly thereafter Bramlette came to his office and outlined a further complaint about his, Dempsey's, employee Woject "bothering his people" and interfering with them at "their work" (2611-2612).

Thereupon, said Dempsey, he instructed his Assistant, Sheriff, to go through the Plant "and look for Frank Wojeck" until he found him and "bring him to the Personnel Department" (2612). Dempsey testified that Sheriff did locate Wojeck "somewhere in the neighborhood of three to three-thirty" and "brought him into the Personnel Department," where Dempsey informed him, Woject, that he was being terminated (2613).

William Lybrand, Superintendent of Finishing, testified that a non-supervisory employee of his, Carlos Poole, had complained to him, Lybrand, about Wojeck's bothering him, Poole, "about the Union" while he, Poole, was in the smoking area—it being the understanding of all the employees that only one employee is supposed to be in the smoking area, in any given department, at any one time (2565). Lybrand stated that Mr. Poole said "he would appreciate it if Mr. Wojeck would leave him alone" (2565).

Further, said Lybrand, the General Overseer of Finishing, Walter Bridgeman, had made a report to him about Wojeck's coming into an area where he had no business being and engaging two of his employees, Woodrow Farr and Larry Masters, in conversation while they were supposed to be at their work (2565). These matters, said Lybrand, he brought to the attention of Dempsey, Wojeck's supervisor, "early on the morning" of the day that Woject "was terminated" (2566-2567).

King Bramlette, Weave Room supervisor, testified that Jesse Stroud, a loom fixer, complained to him that Woject

had "been worrying" him "for about a week and a half on the job" and had asked him if he, Bramlette, could not "do anything about it" (2558). This complaint, said Stroud, he brought to the attention of Dempsey on the same day, as he "learned later," that Wojeck was discharged (2558-2559).

Charles Finley, General Overseer of the Cloth Room, testified that one of his employees, John Stenhouse, had come to him and complained that Wojeck "had been talking" to him "on the job concerning the Union, asking him about joining the Union, signing a card" and "sending it in" and that Wojeck "had given him" a Union card "that morning" while he, Stenhouse, was working (2547). Finley stated that Stenhouse told him, Finley, that Wojeck had been thus contacting him a number of times "over a period of some several days." Finley stated that he went to Dempsey about this (2547).

Wayne Garrett, Overseer of Roving, testified that on the day Wojeck was terminated, he, Garrett, saw him down in the remote area, which is referred to above and which was under Garrett's supervision, talking with one of his employees while the employee was supposed to be working (2495-2496). Garrett further stated that there was nothing in Wojeck's duties which called for him to be in this area "at this time," and that Wojeck had come a long distance out of his way in order to get into this area where he was talking to Garrett's employee (2497-2498).

All this testimony was fully corroborated by non-supervisory employees, including John Stenhouse, Jesse Stroud, Woodrow Farr, Carlos Poole, John Boles and Dwight Mc-

Kinney (2454-2463, 2465-2476, 2479, 2494, 2526, 2530). Jesse Stroud testified, for example, that Wojeck would come to him and expound the virtues of the Union and seek to persuade him to join the Union "once or twice a day" for about a week or "ten days before his discharge" (2469). Stroud stated that he finally "signed a blue card to get" Wojeck "off [his] back" and that he told Wojeck that this was the reason he had done so (2476).

The Examiner's summary observation and "finding" on all of this is that Wojeck was "discharged on reports vague and undefined" (J. A. 120). And to this the Examiner adds the startling imagery that after Dempsey had discharged Wojeck, "he and another supervisor ejected" Wojeck "physically from the Plant" (J. A. 151). This is a pure fantasy on the part of the Examiner, supported by nothing whatever in the record.

The situation, as described by Wojeck himself, was so completely different from what the Examiner "found," that it should put any reviewer on constant guard as to whether the Examiner's "findings" are the product of evidence or imagination. Wojeck testified:—"so I got my money and went on back downstairs to the shop area to pick up my tool box. I asked Mr. Dempsey if it would be all right to drive my car into the gate, inside the lot, so I could load my tool box in the car; and so he said 'yes, come on in the gate and get your tool box'; and he helped me load it up in my car, and before I left, I thanked him for it, and I told him I enjoyed working with him, and shook his hand—and Paul Sheriff, Andy Dempsey and Steve Wilson—I shook hands with all of them" (2150).

From this the Examiner derives a "finding" that Dempsey "and another supervisor ejected" Wojeck "physically from the Plant" (J. A. 151).

James Hill

James Hill worked as a helper on the No. 4 dye range.

Ed Brinkley, Finishing Overseer, testified that, approximately a week before Hill was discharged, it was brought to his, Brinkley's, attention by Edward Elrod, immediate supervisor over Hill, that another employee; Bill Cook, had complained to him, Elrod, that Hill had been "coming up" and "worrying" him, Cook, "every time" that he, Cook, went "in the smoking area," and that Cook had said that if Hill "didn't leave him alone," he, Cook, "was going to drive [Hill] under the range" (2635-2636). Brinkley stated that upon this complaint of Cook being reported to him by Elrod, he, Brinkley, went to Cook and that Cook repeated this same account of the matter (2747). Brinkley stated that Cook further told him that "it had gotten to where practically every time he went to the smoking area," Hill would "come up there and squat down beside of him, and start talking to him there," and that furthermore "every time he would go to the range to pick up his piece tickets," Hill would come up to him and ask him when he, Cook, was "going to change [his] mind and make that right decision" (2636-2637).

Brinkley testified that Cook told him that Hill was also "now bothering Hadyn Parris" (2199). Brinkley stated that he asked Parris about this and that Parris informed him that Hill was bothering him and that often when he

was in "the middle" of his "job," Hill came up and talked to him "about joining the Union" and asked him when he was "going to change" his "mind" (2637).

Likewise, said Brinkley, another employee, Joe Edwards "came to" him and complained to the same effect about Hill, telling him, Edwards, that he had "better change [his] mind and sign that Union card" and that if he didn't, he, Hill, would "sign [him] up any way" (2638-2639).

Brinkley testified that upon these complaints being made to him, he reprimanded Hill about the matter (2640). Then, said Brinkley, Hill began to complain about other employees "bothering" him, and that he thereupon went to each of the individuals whom Hill named and made inquiry of them and warned them not to "bother" or "aggravate" Hill in "any way" (2640).

The Examiner emphasizes an incident, which occurred at about this time, relating to a paper cup that had been tied onto Hill's machine, with an inscription on it to the effect that money was being taken up in Hill's behalf (J. A. 124). As to this, however, the testimony was that Brinkley "saw this" before Hill did, and that Brinkley asked Hill if he knew "who put it up," and that Hill replied that he did not, and that Brinkley "went around and asked" various employees if they had "put that cup up" or if they knew who had done it, but that he "never did find out anything about the cup," and that Brinkley then "destroyed the cup and the note and threw it in the trash can" (2641-2642). Upon this evidence, however, the Examiner finds fault with the Petitioner and declares that it "obtained the benefit of the intimidation" (J. A. 124).

Next, said Brinkley, Hill began to come to him on numerous occasions, stating that he wanted to let Brinkley know that he, Hill, was not talking to other employees whenever he could avoid it. For example, said Brinkley, Hill came to him and told him that he wanted Brinkley to know that "a boy just asked" him, Hill, "for change for fifty cents" and that he "had to tell" the boy that he, Hill, "couldn't talk to him" (2645). Brinkley stated that this sort of "aggravation" from Hill continued, until one afternoon, when Hill came to him and stated that a "new boy had just come" to work on the "No. 5 range" and that he wanted Brinkley to know that he, Hill, "had gone to that boy to tell him that he wasnt going to be able to talk to him" (2646-2647). At this point, said Brinkley, he told Hill that he "was tired" of Hill's coming to him with such matters, apparently for the sole purpose of "aggravating" him, Brinkley, and that he was going to "terminate" him, Hill, "at that time" (2649).

Edward Elrod, Hill's immediate supervisor, and William Lybrand, the Superintendent of Finishing, corroborated these circumstances as narrated by Brinkley (2712-2713, 2715, 2719). And Hill admitted that prior to his discharge, he had been going to Elrod, Brinkley and Lybrand, for approximately a week, and as many as "half a dozen times," telling them that he was explaining to other employees that he could not talk to them (2242).

Leroy Reeves

Leroy Reeves worked as a "smash hand" in the Weave Room, His immediate supervisor was Harold Smith.

Smith testified that on the day of Reeves' discharge, his department was "running," but that, as was not infrequently the case, there was no "smash hand work" needing attention (2441). However, said Smith, in the next department, No. 2, the "smashing" situation was "in very bad shape," and extra smash hands were needed in there (2441). Therefore, said Smith, he told Reeves and two others, of the regular No. 1 smash hands, to go over and work in department No. 2 (2442).

Smith stated that "sometime later" Reeves "came up to" him with "a cup of coffee" in "his hands" and said that if there "was no smashing" to be done in department No. 1, he wanted to get off from work (2443). Smith testified that he told Reeves that there "was too much smashing" to be done in department No. 2 and that he, Smith, could not let him off from work (2443). Thereupon, said Smith, "Reeves turned and went down the alley" toward "his tool box," and that it looked as if Reeves was not going to go and work in department No. 2, as Smith had directed him to do (2443). At this point, said Smith, he went to Walter Looper, the General Overseer of Weaving, and informed him of the situation with respect to Reeves; that he and Looper then went "down to the tool box where Leroy was"; that Looper "talked with Leroy" and asked him was he "going over there" and do the work in department No. 2; and that Reeves answered "no" (2444). Smith said that Looper then turned to him and told him "to write [Reeves'] time out" (2444).

Looper likewise testified that Reeves did not "say anything" as to "why he wanted off," but simply refused to go over and work in department No. 2 (2452).

In his testimony, Reeves admitted that on the day he was discharged, the Plant was running "a regular eight hour work day," and that when he went in to work, "he did not mention" anything to anybody "about getting off that day" (2181). He agreed that it was when Smith told him to go and work in department No. 2, that he "for the first time said that [he] would like to be off" (2182).

Reeves claimed, however, that he told Smith that he would "like" to get off, because he was to be "a pallbearer" at his "Uncle's funeral" and "needed a haircut and a new shirt" (2176). He stated that he did not tell Smith when the funeral was to take place, but that in fact it was not to be held until the next day (2180, 2188). Likewise, said Reeevs, he did not mention anything about a funeral to Looper, but simply told him that he "had taken the circumstances up with Smith" (2182). As has already been pointed out, Smith and Looper testified Reeves never mentioned anything about a funeral, and indeed gave no reason at all for wanting to get off from work, other than the fact that the "smash hand" work was "caught up" in department No. 1.

Reeves further testified that when Looper asked him definitely whether he was or was not "going" to do the work to which he had been assigned in department No. 2, he, Reeves, "didn't tell him" that he "was or wasn't," but that when he told Looper that he "had asked Smith to be off," Looper simply ordered Smith to write out his, Reeves', termination and that "nothing else passed between" him and them (2182, 2183).

Even crediting Reeves' testimony that he told Smith he wanted to get off from work on account of a funeral and rejecting Smith's and Looper's testimony that Reeves never mentioned anything about a funeral, the situation comes to this—that the Examiner and the Board "find" the Petitioner to have discharged Reeves simply because he asked to get off from work on account of a funeral.

Accepting Smith's and Looper's version of the matter, Reeves was discharged because he refused to perform work to which he was assigned—which is certainly not unreasonable. Accepting Reeves' version of the matter, he was discharged simply because he asked to get off from work on account of a funeral—which is an absurdity.

Willis Young

Willis Young worked as a laborer in the Warehouse. His supervisor was Richard Payne.

Payne testified that one morning Young was helping the driver of a fork lift truck. The driver of the fork lift would maneuver it into the side aisles in the Warehouse, where Young would pull cases out of stacks and pile them on a pallet, which in turn rested on the forks of the truck (J. A. 128).

Payne stated that, on the occasion in question, he saw the fork lift truck being backed out of a side aisle into the main aisle of the Warehouse; that the driver of the truck was looking to his rear as he thus backed the truck out of the side aisle and into the main aisle; that as he, Payne, walked down the main aisle, it was moving away from him, its front being presented toward him (2314,

2316). On the front of the truck, as Payne saw it backing down the main aisle in front of him, sat Young on top of a stack of cases, which were resting on the pallet—the whole being supported by the forks of the truck (2315-2316).

Payne testified that as the truck thus moved backward down the main aisle in front of him, with Young in a position facing him, he saw that Young was "slumped over, with his head more or less between his legs, between his knees, in a slumped position" (2137, 2324). Payne stated that he "hollered at" Young, but that "he didn't raise up," and that he, Payne, then "hollered to" the driver "to stop the truck," which the driver promptly did (2317). Payne said that he then "walked up" and "spoke to" Young, and that Young "didn't respond, he didn't say a thing" (2317). Whereupon, said Payne, he "shook him" "on the leg" (2317). At that point, said Payne, Young "raised up," and Payne said to him "what's the matter with you, boy, are you asleep," and that Young replied "no, I just kinda dozed off a little bit" (2317-2318).

Payne stated that he then said to Young "you know we can't have you sleeping on that thing, you'll fall off that thing and get hurt; you get off and go on home" (2318). Young said Payne "didn't say a thing, he just got off the truck and left" (2318).

The next morning, Payne had Young brought to the "Personnel Office," and there informed him that he was "going to have to let [him] go," because of his "sleeping out there yesterday" (2318-2319).

James Chastain, another laborer in the Warehouse, testified that on the morning of the last day Young worked, "about nine o'clock," he saw Young in one of the alleys "leaning up against some cases, like he was nodding, taking a nap" (2326). Chastain stated that he "hollered at" Young, and asked him "what he was doing," and that Young "turned around" but "didn't say anything," so he, Chastain, "left him there" and walked on away (2326-2327). "About ten o'clock," said Chastain, he "went down the return alley" and saw Young "leaning up against some cases" and "nodding again" (2327-2328). Chastain stated that he "went and waked him up and asked him what was wrong," but that Young's "expression showed" that "he didn't want to be bothered," so, said Chastain, he "just left him alone," but that before he walked away, he told Young that "he'd better straighten up and start working, before he got caught" (2327-2328).

Jerry Bowers, who operated a fork lift truck in the Warehouse, testified that on the morning of the same day, while Young's truck was standing "at the end of" an alley, he, Bowers, saw Young "sitting sort of slumped over," with "his head way down," on a stack of "cases that were on the pallet on the fork" (2349). Bowers said that during his "trips through the Warehouse" that morning, he saw Young "two or three other times," and that on these occasions Young's "posture or position" was "the same as before" (2350).

Young testified that when Payne accosted him, he was not sleeping. But he admitted that when Payne came up and got him off of the truck and sent him home, he "didn't

ask" Payne anything, but just "got off the fork lift and went home" (2300). Young's testimony was that Payne simply came up, "patted" him "on the shoulder and told [him] to get off" and "go on home," and to come back the next morning and "meet" him in "the office"—that this is all that Payne said and that he, Young, said "nothing" whatever (2287-2300).

With respect to Young's veracity, he was asked repeatedly whether Payne did not ever tell him, either on the day in question or on the following day, why he was being discharged, and repeatedly he stated that Payne never did tell him "at any time," and that he was "positive of that" (2298, 2299). Later, however, the Petitioner confronted Young with a statement, which Young admitted he had signed and sworn to before a representative of the Labor Board, and in which he had declared that Payne had said to him "I'm going to have to let you go, you were asleep yesterday on that fork lift" (2301).

The Examiner, of course, takes no notice of this. Nor does any of the testimony outlined above faze the Examiner. Instead he chooses to "find" that the Petitioner must have discharged Young because he favored the Union (J. A. 129).

The views of the Examiner, as presented in a colloquy in this case, sound not unlike a passage from a comic opera (2331-2336). Indeed, the Examiner states in his Decision that "from the moment Young placed the last case on the truck until the time a few minutes later, when it arrived at the platform, he had nothing whatever to do

except to ride" (J. A. 129). The Examiner seems to consider that it would have been quite unreasonable for the Petitioner to have any objection to Young's sleeping on the cases atop the fork lift truck, since Young had, at the moment, finished his task of stacking the cases on the truck and was merely riding down the aisle to the platform, where he could awake and unload the cases. The Trial Examiner's view, in other words, is that the Petitioner had no reason to object to Young's sleeping "in transit," up and down the Warehouse aisles, and that therefore he "finds" that Young must have been discharged for Union activity.

Rufus Finley and Donald Jones

Rufus Finley and Donald Jones were "slubber tenders" in the Card Room at the Company's White Horse plant, in Greenville, South Carolina. Jones, like Ben Surratt at the Republic Plant No. 3, did not appear at the hearing before the Trial Examiner at all.

Benjamin Waldrop, Assistant Overseer of Carding, testified that for some time prior to their discharge, Finley and Jones stayed away from their machines entirely "too much," and that whenever they saw other employees "in the vending machine area," they would "go over and talk to them," and that on many such occasions Finley and Jones would not be there "drinking coffee or eating crackers," or for any other purpose except to talk to employees who had gone to the vending machine area (2006, 2007).

Waldrop stated that on the last night that Finley and Jones worked, Coleman Strange, "section man" on the

"cards and pickers," came to his office "between nine-thirty and ten" and told him that one of the employees, Reese Banks, was "all shook up out there," and that "some of the boys" had "got him tore up" (2007). Thereupon, said Waldrop, he went to Banks on his job, and that Banks had "tears" in "his eyes" and "was shaking" (2009). Waldrop stated that he "asked Reese what was wrong," and that Banks told him that Finley and Jones were "pestering" him and wanted him "to join the organizational committee," and that Banks said that he didn't "want to have a damned thing to do with it" and that he had "told them that" (2009).

Waldrop further testified that he asked Banks whether anybody had heard Finley and Jones talking to him, and that Banks said that another employee, Roger Morris, "was in the area" and might have heard what Finley and Jones said to him (2010). Waldrop said that he then inquired of Morris and that Morris said he "didn't hear them" but that Finley and Jones had been "bothering [him] over there" about "joining the Union" (2010).

Waldrop testified that he then went to Finley and Jones and told them that they were creating "disturbance" in "the Mill," and that they would have to go home and "come back" the next day and "talk to [his] boss," C. J. Allen, the General Overseer of Carding (2011).

After he had sent Finley and Jones out of the Mill, said Waldrop, another section man, Jack Balchin, came to him and told him that another employee, James Timms, had been "over at the vending machine" that night, and

that Finley and Jones had gone over to him and solicited him "to join the Union" (2011). Waldrop stated that he then went and talked to James Timms, and that Timms confirmed "exactly what" the "section man had told" him, and that Timms further stated that "every time he went over there that night" Finley and Jones had tried to get him "to join the Union, the organizational committee" (2011, 2014).

Still later the same night, two other employees, Merlyn Robinson and Gerald Owens, came to Waldrop in his office and complained that Finley and Jones had been soliciting them to join the Union—Robinson "at the vending machine" and Owens on "the spare floor" (2015).

Coleman Strange, section man, testified that he noticed some of the employees "ganging up down there" and "staying too long" in the vending machine area, and that upon Banks' leaving this group and returning to his machine, he "was shaking and crying" (2034). Strange said that he asked Banks "what was wrong," and that Banks said that Finley and Jones "had been" onto him about joining up with the Union, and that he had told them that he didn't want to have any "part of a Union," and that Jones then told him that if the Union "got in," he would "make" him, Banks, "wish [he] had of joined the Union" (2035).

C. J. Allen, the General Overseer, testified that when he came to the Plant the next morning, Waldrop told him that he, Waldrop, had sent Finley and Jones home during the night and explained why he had done so (2038). He

stated that Waldrop gave him the names of five employees whom he, Allen, should talk with, and that Waldrop told him that he, Waldrop, had already talked with all of them (2038). Allen stated, however, that by the time Finley and Jones came in to see him, he had only had opportunity to talk to one of the five employees whose names Waldrop had given him (2040).

Allen testified that he told Finley and Jones that he understood they had been "creating a disturbance" among some of the other employees (2041). Upon being questioned by the Examiner as to what constituted "a disturbance" Allen replied that if employees were "disturbed enough to complain," then he thought that was "disturbance" (2043).

Allen stated that Finley and Jones said "well, you're going to fire us anyway, why can't we get our money today, and not have to come back," and that he told them that he "had not fired them," and that he "was going to talk to the other four employees involved" (2044). But Finley and Jones, said Allen, "still wanted their money, to save them a trip from having to come back to the Plant," so he let them have the money that was due them (2044). He stated that he then proceeded to "interview the other employees" and learned from them "approximately the same story that Mr. Waldrop had given" him, and that after talking "with the four other boys involved," and their statements having "verified the story that the Assistant had given" him, he then "made out a separation paper and turned it in" to the Personnel Department and that thereupon Finley and Jones became officially terminated (2045).

Finley, in testifying, admitted that upon Waldrop coming to him and asking him if he had been soliciting Banks "to get on the Union organizing committee," he falsely told Waldrop that he had not, "although in fact" he "had," and that upon Waldrop asking him again, he answered "hell, no," and that in such repeated and emphatic statements to Waldrop, he, Finley, was not telling the truth (1976). Waldrop testified that Jones also falsely denied such solicitations of Banks (1943).

Banks testified that what "shook" him up about his conversation with Finley and Jones was the threat made to him that if he "didn't join" the Union and it "got in," he would "wish [he] had" (2054-2055).

Merlyn Robinson testified that Finley and Jones "approached" him "at least two or three times" to get him "to join the Union," and that this occurred "at the canteen" and "at the drink stand" and "in the Mill area" (2072, 2073).

James Timms stated that "more than once" Finley approached him "in the water house" about "getting" him "to join the Union," and Gerald Owens testified that Finley "stopped" him as he was going to his machine and solicited him "about joining the Union" (2085, 2101).

John Little and Leslie Hancock

John Little and Leslie Hancock were "stitchers" in the Cloth Room at the Company's Patterson plant, in Roanoke Rapids, North Carolina. Hancock, like Ben Surratt and Donald Jones, never appeared at the hearing at all.

S. H. Crumpler, Superintendent of the Plant, Benjamin Bobbitt, Assistant Superintendent of the Plant, Clayton Griggs, Assistant Superintendent of the Finishing Plant, and Robert Pulley, General Overseer of the Cloth Department, all testified that during most of the year preceding the discharge of Little and Hancock, in August, the "Finishing" Plant was making severe and repeated complaints about rolls of cloth which had "bad and crooked seams" caused by the stitchers failing to sew the seams straight (3045-3048, 3082-3084, 3140-3142, 3112-3114).

Pulley stated that he first discussed this with his "stitcher operators" in February, and that, in April, Bobbitt also came and talked to the stitchers about the situation (3112-3113). The result was, said Pulley, that the stitching "got better" for "almost two months," and that then it "went right back to the same slump" (3113-3114).

At this point, said Pulley, Bobbitt told him that the matter "would definitely have to be straightened out," and that he, Pulley, went to the stitchers and told them "they would have to do better" and that "if they didn't, somebody might have to be discharged" (3114-3115).

Bobbitt testified that he told Pulley that the bad seams "had to stop," and that it was going to be necessary "to have straight seams" (3085).

Robert Haskins, a witness for the Board's General Counsel, was asked on cross-examination if the "stitcher machine operators" were not "taken into Mr. Pulley's office" and there showed "crooked seams and talked to" by Mr. Bobbitt, some "three or four months before the

discharge of Hancock and Little" (3032). Haskins denied that this was done prior to the time when Little and Hancock "got fired" (3032). But upon being shown a statement, signed by him for a representative of the Labor Board, Haskins admitted that he had told the Labor Board representative that the stitcher machine operators "were called into Pulley's office" and were there "showed" a "pile of crooked seams" and "talked to" by Bobbitt, "back about April, 1964" (3032). Upon being confronted with this statement, Haskins admitted that this did occur "before these boys were discharged" (3033).

Crumpler, the Plant Superintendent, testified that one day in early August, he was in the Cloth Room and stopped to watch the cloth coming off the tables and saw that Little and Hancock were sewing crooked seams in the cloth (3049). He stated that he then "sent for" Bobbitt and Pulley and said to them "there's the bad seams in the box, look at them, and take whatever steps" are "necessary to get it corrected" (3049).

Bobbitt testified that, on this occasion, Crumpler told him that this "was the thing we had been talking about for about three months and we were still doing it," and that he "had seen it, and he had it in a box, and he wanted me and Mr. Pulley to do whatever was necessary to correct it so he wouldn't find it any more," and that he, Crumpler, "didn't want to see any more crooked seams" (3087). Bobbitt stated that he did "look at the seams" and that "they were not" straight (3087).

Bobbitt said that he and Pulley "went back into the office" and "discussed the problem," and that he told

Pulley that Crumpler had said that he "couldn't put up with" these "bad seams any more," and that Crumpler was looking to him "to take care of it" (3088). Bobbitt said that at this time he "recommended discharge" and that Pulley "agreed," because they "thought with as much time as" had been "spent" and "as much cloth" as had been "shown to" the stitchers, such action should now be taken (3089).

The Examiner says that "on August 7," the occasion in question, Crumpler "for the first time" went into the Cloth Room and observed the stitching operation, which at that time and on that shift was then being done by Little and Hancock (J. A. 147). On the contrary, Crumpler testified that "quite a few times" he went out into the Cloth Room and made "observation about the stitching" and he had many times previously looked at the stitchers performing their work and "still" did so (3048-3049, 3054). Robert Pulley stated that Crumpler came down into the Cloth Room and went "over and in and around the jobs in the Cloth Room" very frequently (3134).

Morris Moseley, a witness for the Board's General Counsel, stated that Crumpler "walks through there all during the day" and that this has been true both "before and after" the discharge of Little and Hancock, and that he didn't notice "any difference" in the frequency of Crumpler's visits and inspections in the Cloth Room, as between the time prior to the discharge of Little and Hancock and the time subsequent to their discharge (3017).

The Examiner says that upon Crumpler's calling to the attention of Bobbitt and Pulley the bad seams which he

had observed, they, Bobbitt and Pulley "measured some of the seams with a ruler, found that some were crooked and cut them out and brought them to Crumpler's office," and that "the two stitchers were then called to the office and discharged" (J. A. 145). This is not correct. As pointed out above, when Bobbitt and Pulley first looked at the cloth, they could immediately tell by sight that "they were not" straight—just as Crumpler had been able to see that they were not straight. The measuring was done the next day, August 8, after Little and Hancock had been discharged on August 7 (3102).

In testifying, Little admitted that at the time he was discharged, he did not "ask to see" the cloth, on account of which he was being discharged, and that he "didn't want to see it" (3003).

The Examiner says that "if there was any question" in his mind about the bad seams sewn by Little and Hancock being merely "a pretext for their discharge," any such question is "dispelled" by remarks attributed by Robert Haskins to one Willie Pulley, whom the Examiner declared to be the "immediate supervisor" over Little and Hancock, to the effect that he, Pulley, "did not exactly know" why "Little and Hancock were terminated" but that "he thought it was because of the Union" (J. A. 144, 148). The Examiner and the Board, of course, reject Willie Pulley's denial of this and equally ignore his testimony, and the testimony of Crumpler, Bobbitt and Robert Pulley that Willie Pulley was not a supervisor (3055, 3103, 3124, 3150, 3152).

All of these witnesses emphasized that Willie Pulley was an "hourly" paid "working foreman"; that he had no authority to hire or fire or discipline employees, nor to make any "recommendation" with respect to their promotion or demotion or the determining of their pay; that he never attended meetings of supervisors; that he was present in the department when Little and Hancock were brought in and discharged, but that he was not asked to come into the office when they were discharged; that he had "to get in touch" with Robert Pulley about any request by an employee for "time off" and the like; that his duties consisted of "manual work" and "recording tickets off of the rolls of cloth" and that he received no "benefits or so-called fringe benefits" of any sort beyond those of "the rank and file employees" (3055-3056, 3103, 3124, 3150-3151, 3162-3163).

CONCLUSION

Upon all that is herein set forth, the Petitioner earnestly prays the Court for a Writ of Certiorari, directed to the United States Court of Appeals for the Second Circuit, to the end that this Court may review the Decision which has been rendered by that Court in the present case.

Respectfully submitted,

WHITEFORD S. BLAKENEY

Attorney for the Petitioner

APPENDIX

OPINION OF THE COURT BELOW

United States Court of Appeals

FOR THE SECOND CIRCUIT

Nos. 86, 87—September Term, 1967.

(Argued October 10, 1967 Decided December 27, 1967.)

Docket Nos. 31164, 31245

TEXTILE WORKERS UNION OF AMERICA, AFL-CIO,

Petitioner,

—v.—

NATIONAL LABOR RELATIONS BOARD,

Respondent.

J. P. STEVENS & CO., INC.,

Petitioner,

—v.—

NATIONAL LABOR RELATIONS BOARD,

Respondent,

and

TEXTILE WORKERS UNION OF AMERICA,

Intervenor.

Before:

LUMBARD, *Chief Judge,*
SMITH and FEINBERG, *Circuit Judges.*

Petitions for review and cross-petition for enforcement of an order of the National Labor Relations Board, 163 NLRB No. 24, requiring the employer, *inter alia*, to cease and desist from various unfair labor practices and to reinstate discharged employees, and dismissing complaints alleging violations in the discharges of certain other employees.

Order modified and, as modified, enforced.

DANIEL B. JORDAN, New York, N. Y., for *petitioner Textile Workers Union.*

WHITEFORD S. BLAKENEY, Charlotte, No. Carolina (Blakeney, Alexander & Machen, Charlotte, No. Carolina, and Paul, Weiss, Rifkind, Wharton & Garrison, New York, N. Y., of counsel), *for petitioner J. P. Stevens & Co.*

JANET KOHN, Attorney, National Labor Relations Board (Arnold Ordman, General Counsel, Dominick L. Manoli, Associate Counsel, Marcel Mallet-Prevost, Assistant General Counsel, and Glen M. Bendixsen, Attorney, National Labor Relations Board, on the brief), *for respondent.*

SMITH, *Circuit Judge:*

This case is before us on two petitions to review and a cross-petition to enforce an order of the National Labor

Relations Board issued on March 6, 1967, 163 NLRB No. 24, against J. P. Stevens & Co., Inc. ("the Company"). For the second time in less than a year, the Board found that the Company had engaged in numerous violations of sections 8(a)(1), (3) and (4) of the National Labor Relations Act, 29 U. S. C. §§158(a)(1), (3) and (4) ("the Act"). In *J. P. Stevens & Co.* v. *N. L. R. B.*, 380 F. 2d 292 (2 Cir. 1967), cert. denied Sup. Ct. No. 684 (December 11, 1967), we enforced with modifications an order of the Board (substantially similar to the one now before us) issued against the Company on March 22, 1966, 157 NLRB 869. The facts of that case are the background of this one.

In the spring of 1963, the Textile Workers Union of America, AFL-CIO ("the Union") undertook a concerted organizing campaign in approximately half of the Company's forty-three textile plants in North and South Carolina. The Company notified its employees of its intention to oppose the Union, and in response to letters from those of its employees who joined the Union, advising it that any interference with the rights of Union adherents would be referred to the Board, it warned that "You will be expected and required to perform your job as fully as anybody else —if you wish to remain in the Company's employment." The Company subsequently posted on various plant bulletin boards the names of Union members who had written, together with copies of the Company's reply. Many of these workers were eventually discharged; others withdrew from the Union, and as they did so their names were crossed off the lists.

We summarized as follows the change in the Company's attitude toward its workers which came about with the commencement of the organizing campaign:

> Prior to the organizing campaign, the plants had been operated in a permissive manner. Once an employee was hired, his tenure was fairly secure; discharges were uncommon. The Company was tolerant, even lenient, in such matters as absences, work breaks, transfers, and rehirings. Formal written reports of employee reprimands, known as Personnel Action Reports or write-ups, were infrequent and occurred only where misconduct was serious or repeated. With the advent of the Union, however, this attitude changed swiftly. Issuance of write-ups, often quickly followed by discharge, became common for Union adherents. Incidents or activities that had previously been overlooked now occasioned speedy and severe disciplinary action.

380 F. 2d at 296. The Board found, in that case, that in the course of its anti-union campaign the Company had discriminatorily discharged seventy-one employees because of their union activity. We found substantial evidence to support the Board's findings.

During the course of the hearing in that case, the Company continued to discharge employees, and further unfair labor practice charges were filed with the Board. Some of these led to amendment of the complaint, and thus have already been adjudicated. Other charges were still under investigation when the hearing closed, and those, together with additional charges alleging further discharges and

other acts of interference, restraint and coercion in the period from the close of the hearing in September, 1964 through May, 1965 are the subject matter of the present case.[1]

The Board found, in the decision and order now before us, that the Company repeatedly violated section 8(a)(1) of the Act by threatening reprisals, promising benefits, engaging in related acts of interference, coercively interrogating employees, creating the impression of out-of-plant surveillance of employees, requiring an employee to go home and take off an "AFL-CIO" T-shirt, attempting to induce an employee to resign, and discriminatorily applying a no-solicitation rule. The Board also concluded that the Company, in violation of sections 8(a)(3) and (4) of the Act, discharged thirteen employees because of their union activities, four additional employees because of their union activties and because they had testified adversely to the Company in the first hearing, and one employee, not a union member, because she too had testified against the Company. The Company was also found to have violated section 8(a)(3) of the Act by discriminating against two employees in the assignment of overtime work. Finally, the Board concluded that the General Counsel had failed to prove that the discharges of six employees were unlawful.[2]

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[1]As in the first case, the charges were initially filed by Industrial Union Development, AFL-CIO.

[2]The trial examiner found that nineteen employees had been unlawfully discharged, and that the General Counsel had failed to prove unlawful discharge as to five. The Board Affirmed as to seven-

We have reviewed the Board's findings and the record with respect to each of the discharges covered in the Board's decision and order, and have found substantial evidence to support the findings. As in the earlier case, the evidence of anti-union action is overwhelming in some instances, and nearer the borderline in others. The Company points to alleged evidence of unsatisfactory work by each of the employees found to have been discriminatorily discharged. Even in those instances where we must acknowledge the existence of two fairly conflicting views of the evidence, we are of course not at liberty to displace the Board's choice between those views. *Universal Camera Corp.* v. *N. L. R. B.*, 340 U. S. 474, 488 (1951).[3] Two discharges with respect to which the Trial Examiner and the Board disagreed as to the Company's motivation are representative of the "close cases." As to one, the Board reversed a finding that the Company had not violated the Act; as to the other, the Board reversed a finding of violation.

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teen of the nineteen found unlawfully discharged, and found in addition that one employee, who the examiner thought had been lawfully discharged, was instead discharged because she had testified against the Company in the first proceeding. The Board made numerous other changes in the examiner's findings, including the correction of the inadvertent omission to find that employee James Hill had unlawfully been denied overtime work.

[3]See *N. L. R. B. v. Interboro Contractors, Inc.*, —— F. 2d ——, slip op. p. ——. We pointed out in the first case, *J. P. Stevens & Co. v. N. L. R. B.*, 380 F. 2d at 296, n. 4, that the standard of review set out by the Fifth Circuit in *N. L. R. B. v. Tex-O-Kan Flour Mills Co.*, 122 F. 2d 433, 438-39 (5 Cir. 1941), was disapproved in *N. L. R. B. v. Walton Mfg. Co.*, 369 U. S. 404 (1962) (*per curiam*). The Company, with parrot-like persistence, again quotes to us the *Tex-O-Kan* standard.

Juanita B. Faulkenberry worked as a weaver in the Company's Republic plant No. 1 for twelve or thirteen years until her discharge on October 23, 1964. She had thirty years of experience as a weaver, including jobs for two or three years at the Republic plants Nos. 2 and 3. Her work record with the Company was a good one until just prior to her discharge. On March 27, 1964, Faulkenberry gave testimony at the first hearing which partly contradicted that of her immediate supervisor, Simean Dawkins.[4] According to Faulkenberry's corroborated testimony in the hearing in this case, several weeks after her 1964 testimony, Arthur Justus, the general overseer of weaving in the plant, began to watch her work closely. During the summer of 1964, her "loom fixer" was replaced by a "learner-fixer" who had never before fixed looms. In September, she was given a very difficult style of cloth to weave which, according to her testimony, made it more difficult to start up about twenty of her looms. At about this time the weaver in charge of Faulkenberry's looms on the preceding shift complained that the job was too difficult, and was transferred to another job and replaced by one Darby, who, according to Faulkenberry's uncontradicted testimony, "would leave the warp in such a mess that it would take me two or three hours to start the looms

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[4]She testified that her loom fixer, alleged to have been discharged in violation of Section 8(a)(3) of the Act, was working very hard on a job that had been left in real bad shape and that although she had on occasion complained to Dawkins about that fixer's slowness, she did not do so "too much." Dawkins testified that he had "many" complaints from her about that fixer. The examiner characterized her contradiction of Dawkins' testimony as relatively innocuous, but the Board disagreed.

up. . . ." Faulkenberry complained to her supervisors about Darby on a number of occasions, and requested a better loom fixer, but no action (other than promises that Darby would be spoken to about the problem) was taken. About a week before her discharge, Faulkenberry received a personnel action report for low production, which was the first warning she had ever received. According to her own testimony, her production "was real low." During her last week on the job, however, she was assigned an experienced loom fixer and her production rose substantially.

On October 23, 1964, the Company introduced a production change which involved doing away with a set of looms on each of the three shifts; accordingly, Faulkenberry was laid off and a weaver from each of the other shifts was assigned to other work. During the week previous to the change, the three employees taken off weaving were the lowest in production on their respective shifts. Justus and Dawkins both testified that other weavers with the same "learner-fixer" had higher production. Justus also testified, however, that a learner-fixer and a difficult style would affect any weaver's production adversely, and Dawkins, on cross-examination, remembered having testified during the 1964 hearings that the fixer had more effect on production than did the weaver.

The Trial Examiner, after noting that "Justus' credited testimony is that he was not aware of the improvement in [Faulkenberry's] production until after her layoff . . .," concluded that "Since Faulkenberry was not associated with the Union, and since her testimony at the first hearing was relatively innocuous, I do not find that the General

Counsel has met the burden of proof which rests upon him and I shall recommend that the complaint be dismissed as to Faulkenberry." The Board rejected the recommendation. It noted, among other things, that "Faulkenberry had seniority over many other weavers," that "Faulkenberry's testimony at the first hearing was damaging to the Respondent's case and contradicted that of her supervisors who were later responsible for her discharge," and that when Faulkenberry came to the personnel office asking for work at a time when the Company was hiring weavers, the Company, "although it knew of the material increase in her production during her last week and of her desire to work, . . . hired weavers with less seniority and experience than Faulkenberry." The Board concluded:

> In these circumstances we find that the [Company's] assigned reasons for Faulkenberry's discharge were pretexts and that the real reason was that she had given testimony under the Act unfavorable to the [Company]. Accordingly, we find that by discharging Juanita Faulkenberry, the [Company] violated Section 8(a)(4) of the Act.

It is clear that the conclusions of the Trial Examiner and of the Board as to the reason for Faulkenberry's discharge were based on different inferences drawn from the same record testimony. We are not assigned the task of drawing our own inferences as to the Company's motivation; so long as we find substantial evidence supporting the Board's conclusion (taking into account whatever in the record fairly detracts from its weight), that conclusion must stand. *Universal Camera Corp.* v. *N. L. R. B., supra.*

The fact that the Trial Examiner reached a conclusion different from that reached by the Board would be more significant had he based his conclusion on a disbelief in Faulkenberry's testimony. See *N. L. R. B.* v. *A. P. W. Products Co.*, 316 F. 2d 899, 903 (2 Cir. 1963). But the examiner credited all of the testimony bearing on Faulkenberry's discharge, and his recommendation was based on what he considered to be the innocuous nature of her testimony at the first hearing. The Board concluded that the Company did not consider her testimony innocuous, and the Board was of course entirely free to determine this question for itself.

William Coker had been employed by the Company as a weaver for twenty-three years when he was dismissed from its Estes plant on May 25, 1965. Coker was active in the Union, and he was listed as a member of its organizing committee on union leaflets distributed at the Estes plant. During the latter part of October, 1964, Coker wrote a lengthy letter to a local newspaper, detailing the merits of the Union, in reply to an anti-union letter which had appeared in the same newspaper. Publication was refused, and the Union then published the letter over Coker's signature and distributed it at the plant gate. Two weeks later, Coker was transferred from the first shift, on which he had always worked, to the second shift. He thus came under the supervision of Shannon McCall, second shift overseer, who told him that the Union didn't care about the workers, but only wanted their money. Shortly thereafter, Coker was written up for reporting early for work on the second shift and talking with other employees, something he had be-

come accustomed to doing. J. C. Blackston, general overseer of weaving at the Estes plant, testified:

> [O]ur gate opens thirty minutes before shift change; any employee is free to come in if they like. . . . Well I noticed one particular day, this particular day I had the report made out, that [Coker] was there just about at three-thirty, and I saw him talking to six different weavers; so up close to change time, I went to him and asked if he'd mind waiting until ten minutes before four to come out in the weave room . . . and he said he would be glad to, and he didn't do it any more, as far as I know.

Coker was written up again on March 26 and March 30, 1965 for not inspecting his cloth properly. On May 13, 1965 he acted as a union observer at a Board election. Two days later he received another writeup for improper inspection, and McCall outlined for him the precise procedure of proper inspecting.

On May 24, 1965, Coker was inspecting looms at the beginning of his shift, and came to loom No. 46, which had a new warp tied on. He looked only at the face of the cloth, and, noticing nothing wrong, initialed it. Coker stated that he did not follow the complete inspection procedure because the loom had a new warp, and he intended to return to it after he finished inspecting his other looms. While Coker was attending to his other looms, McCall came to loom No. 46 and noticed some torn selvage on the loom. Blackston was shown the torn portion of the cloth the next day. After noting Coker's initials on the cloth, and that the torn portion must have been running

at the time Coker initialed it, Blackston concluded that Coker could not have properly inspected the cloth. Coker was discharged that day.[5]

The Trial Examiner, noting that Coker's credited testimony was that the method of inspection he followed on May 24 was the same he had been following ever since he was employed, and that although the end purpose of inspection is to reduce seconds, Coker's seconds were fewer than average during the last two weeks of his employment, concluded:

> I am persuaded that [the Company] emphasized Coker's alleged shortcomings in inspecting when it became apparent during the hearing that it could not plausibly advance his percentage of seconds as the reason for discharge, and that its real reason was his mem-

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[5]The Company's stated reason for discharging Coker was improper inspection. Coker, however, testified: "He said, we've been talking to you about seconds once before . . . we don't need you any more; and I said, well, okay, if that's the way you feel about it; and I says, I want you to know one thing, I says, I have tried my best to do a good job in the years I've been here, and I know you all been watching me, and have for quite a while, trying to get something on me; and I said, I guess you know that you'll have to deal with the Labor Board. . . . They just laughed, and didn't give no reply."

The Union argues that the examiner erred in excluding evidence that on March 24 or 25, just before the writeup of March 26, Coker was present as a potential witness at a representation hearing held to establish the bargaining unit prior to a Board election. We think that any error committed was harmless, in that both the examiner and the Board were fully aware that a number of Coker's writeups followed close upon his union activity.

bership in the Union, particularly his activity as a member of its organizing committee and his attempted advocacy of its cause in the newspapers.

The Board disagreed. It based its conclusion that Coker was not discriminatorily discharged on the fact that in the thirteen years prior to his discharge Coker had received twelve personnel action reports, eight specifically mentioning Coker's poor inspecting, and on its acceptance of the Company's contention that uniform inspection procedures are important to its program of quality control, regardless of whether unorthodox methods of inspection might sometimes result in fewer seconds for a particular individual.[6]

Here, as in the case of Faulkenberry's discharge, the Trial Examiner and the Board drew different inferences from the same record, and we must acknowledge that on the record considered as a whole there is substantial evidence to support the Board's finding. It may well be that there is also substantial evidence to support the examiner's conclusion, but that is just a way of saying that this was a close case. Most of the discharges, however, were anything but that.

James Hill worked in the finishing department at the Company's Slater plant. He was an early Union adherent, and took part in a union campaign in September, 1963. Hill testified that in October, 1963, he began to lose overtime, and data submitted by the Company corroborate his

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[6]Company witnesses testified, in effect, that improper inspecting procedures were contagious among the weavers.

claim. He testified that after he filed a charge with the Board in May, 1964 he was given some overtime. On August 31, 1964, Hill helped to pass out a union leaflet on which his name appeared; immediately thereafter, his supervisors began to watch him closely. On September 4, 1964, his general shift overseer, Ed Brinkley, wrote him up for "bothering [employees] on the job and interfering with their work." On the writeup Hill was advised: "[A]ny further complaints of this nature [and] you will be subject to discharge." When Hill inquired as to who had complained, Brinkley refused to tell him. According to Hill's testimony, credited by the Trial Examiner, either Brinkley or another overseer asked him why he did not resign his employment. Following the writeup, three anti-union employees inaugurated a hazing campaign against Hill. His reaction, understandably enough, was to ask Brinkley to stop the hazing. Thereafter, Hill came to Brinkley on a few occasions to let him know that he was not talking to other employees whenever he could avoid it. Brinkley considered this aggravating. When Hill came to him on September 14, to tell him that he had just told a fellow member of the union organizing committee that he couldn't talk to him, Brinkley "didn't see any use in [Hill] coming to me with little things like that," and Hill was discharged. Brinkley testified:

> I told James at that time, I said, Mr. Hill, I said, I'm tired of you coming to me with these complaints about employees bothering you, and I said, as far as I'm concerned, you're through.

The Board found that Hill had been discharged and denied overtime work because of his union activity, in violation of Section 8(a)(3) of the Act.

As in most of the other discharges involved in this case, the Company's anti-union motivation in discharging Hill was patent. Another employee was dismissed for bringing leaflets into a plant and spreading them around; a Company investigation of the incident had failed to disclose who was responsible, and the employee discharged had not even been questioned during the investigation. We see no purpose in continuing to describe the individual discharges at issue in the case. We have considered the parties' arguments as to each of them and uphold the Board's determination as based on substantial evidence on the record as a whole.

The Board has once again issued an unusually broad order against the Company. We have no doubt that the circumstances call for an unusually broad order. The Trial Examiner fairly summarized the situation as follows:

> The record of the 1965 hearing reflects the continued, systematic determination of this employer as revealed by the record of the 1964 hearing, to destroy the union root and branch by discharging its most active members on any pretext which might come to hand, or could be invented, by threatening to discharge others unless they come to management and renounced [sic] the Union, and by provoking the resignation of still others from [the Company's] employment. No other conclusion can be drawn than that [the Company] has largely succeeded in its purpose.

The Board's order contains the usual cease and desist, reinstatement, and back pay provisions, which are unquestionably proper.[7] In addition, the order requires the Company: (1) to post the usual notice in all of its plants located in North and South Carolina (not just in the plants where unfair labor pactices have occurred); (2) to mail a copy of the notice to each employee at every plant; (3) to convene all of its employees, by departments and by shifts, and have a responsible Company official read them the notice; (4) to immediately grant to the Union (upon the Union's request) reasonable access, for a one-year period, to the Company's bulletin boards and all places where notices to employees are customarily posted; and (5) to immediately give to the Union, upon request made within one year, a list of the names and addresses of all employees in the Company's plants in North and South Carolina.

We approved the first two requirements, in their application to all of the Company's plants in North and South Carolina, in *J. P. Stevens & Co.* v. *N. L. R. B., supra.* We approve them again, for the reasons given there, 380 F. 2d at 303-304.

The third requirement, that the Company read the notice to its employees, was also contained in the order in *J. P. Stevens & Co.* v. *N. L. R. B., supra.* We thought that in view of a number of considerations, including the element of humiliation in having Company officials personally

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[7]We include in these the provision that employees Rosemond and James Hill be offered overtime work in accordance with prior practice and be made whole for loss of overtime pay.

and publicly participate in reading the notice, the order should be enforced only at those plants where the Board found unfair labor practices, and should be modified to afford the Company the alternative of having the notice read by Board representatives, rather than by its own officials.[8] The Board has stated in its brief that in the circumstances of this case the policies of the Act may be effectuated with an order similarly limited; accordingly, the third requirement will be enforced only at those eight plants where the Board found unfair labor practices in this case, and the order is modified to provide that at the Company's option the notice will be read by representatives of the Board rather than by the Company's officials.[9]

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[8]The Company contends, as it did in *J. P. Stevens & Co.* v. *N. L. R. B.*, that this requirement is tantamount to coercing a confession, and reminds us that "During centuries past, countless thousands suffered oppression and tortures and death rather than confess they had committed wrong when they deeply and devoutly believed that they had not." Once again, we regard the requirement somewhat less emotionally than does the Company.

The Company suggests that having the notice read by Board representatives amounts to a "take over" of the Company's plants. We are sure that the Board has no such intention. It is also suggested that the notice, when read, should be amended so that each paragraph is headed "The Company is ordered," instead of "We will not." We see no need for such an amendment.

[9]The Company states in its brief that there were unfair labor practices found in seven plants. This is in error; the Board found unlawful discharges only in seven plants, but found unfair labor practices had occurred in the Estes plant as well, although it reversed the trial examiner's finding that William E. Coker, employed at the Estes plant, had been unlawfully discharged.

Once again, we do not hold that a reading provision without this alternative of reading by Board representatives would never be appropriate. See 380 F. 2d at 305, n. 21.

We noted in *J. P. Stevens & Co.* v. *N. L. R. B., supra,* that the Fifth Circuit has refused to enforce an order similar to the one which we modified in that case. *N. L. R. B.* v. *Laney & Duke Storage Warehouse Co.*, 369 F. 2d 859, 869 (5 Cir. 1966). The District of Columbia Circuit has now, in a 2-1 decision, taken a view in accord with that of the Fifth Circuit, and has also rejected the modification which we approved in *J. P. Stevens & Co.* v. *N. L. R. B.* and which we again utilize in this case. *International Union of Electrical, R. & M. Workers* v. *N. L. R. B.*, 383 F. 2d 230 (D. C. Cir. 1967). That court's reasoning is as follows:

> [G]iving the company the choice of reading the notice or having a representative of the Board read it to the employees . . . creates a problem more severe than the one it supposedly solves. The practical effect of the exercise of the option is to put the imprimatur of the Board on both a particular union's activities, as well as on union activities in general, by having a representative of the Board read a notice resulting from unfair labor practices which arose because of, and from, company activity in opposition to a union's organizational activities. It follows, then, that the Board is in the position of not being completely neutral, although that is the position which the Board is legally duty bound to take. Further, we would not, sua sponte, offer as an alternative to the employer a choice between a company or a Board representative giving the public reading; such a de novo remedy would run counter to the premise that remedies should be worked out by those having the most experience and expertise in the area. 383 F. 2d at 233, n. 5.

We cannot agree that having a Board official read a Board order puts the imprimatur of the Board on a particular union's activities or on unions in general. Of course the Board must be neutral in its approach to any proceedings before it, but once it has been found that an employer has acted unlawfully, the question is not how the situation can be neutrally remedied; it cannot, for a remedy is by definition not neutral. As Judge Wright of the D. C. Circuit said in dissent: ". . . adequate remedies are needed to restore the balance." 383 F. 2d at 234. The reading of a Board order by a Board official surely does nothing more to destroy the Board's neutrality than does the customary heading on notices posted by employers pursuant to Board orders stating that the employees are being notified "pursuant to a decision and order of the National Labor Relations Board."

We do not consider our modification in *J. P. Stevens & Co.* v. *N. L. R. B.* a departure from the principle that remedies should be worked out by those having the most experience and expertise in the area. We said in that case:

> [T]he reading provision was . . . designed . . . , as the Board said, "to undo the effect" of numerous and egregious unfair labor practices by insuring that the full counteracting force of the remedial order would be felt by the employees. 380 F. 2d at 305.

We saw an element of humiliation in having Company officials personally participate in the reading (an area in which we do not doubt our competency), and the opportunity to eliminate that element without changing the im-

pact of the Board's remedy.[10] The Board states in this case that a reading by Board representatives will effectuate the policies of the Act. And we do not consider the order to be penal in nature. Compare *Local 57, International Ladies' Garment Workers Union* v. *N. L. R. B.*, 374 F. 2d 295 (D. C. Cir.), cert. denied 387 U. S. 942 (1967).

The next provision of the Board's order which we must consider is that requiring the Company to give the Union reasonable access to its bulletin boards for a period of one year. We refused to enforce a similar provision in *J. P. Stevens & Co.* v. *N. L. R. B., supra,* because "the Board made virtually no findings concerning the issues relevant to solicitation, and made no adequate showing that the Company's bulletin boards are necessary to the Union in its organizational campaign." 380 F. 2d at 305. In the case before us, the Board contends that Union access to the bulletin boards is necessary in order to offset the Company's use of the boards in its campaign of coercion and in the posting of lists of employees who had joined the Union, the names of those employees who withdrew being "scratched" from the lists. We think that in view of the Company's use of the boards in combatting the Union, giving the Union reasonable access to them will effectuate the purposes of the Act, in that it will help to restore to the employees the opportunity to hear all viewpoints. We will therefore enforce this portion of the order.[11]

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[10]See Ross, Analysis of Administrative Process Under Taft Hartley, 63 Lab. Rel. Rep. 132, 153 (BNA 1966).

[11]In granting enforcement, we take account of the Company's particularly intensive anti-union campaign, somewhat more serious than that in *N. L. R. B.* v. *H. W. Elson Bottling Company,* 379 F. 2d 223 (6 Cir. 1967), where a similar requirement was granted enforcement.

The Company contends that since the Board has not limited the nature of the material which the Union may place on the bulletin boards, or the frequency of the Union's access, controversy over such questions "could produce a veritable tangle of litigation," and that the order places in the Union's hands a large measure of control over operations in the Company's plants, for "by means of what it might place in front of employees while at their work, the Union could excite them, arouse them, distract them, and create widespread deterioration of morale and performance . . ." The Board's order limits the Union to "reasonable" access to the bulletin boards. We trust that the Union will bear that in mind, and that the Company does not intend to litigate the reasonableness of every piece of material posted by the Union.

The final provision of the order requiring our attention is that which directs the Company to provide at the Union's request a list of the names and addresses of all of its employees in North and South Carolina. We do not think that this provision, in these circumstances, is designed to effectuate the policies of the Act.

The power of the Board to command affirmative action is of course remedial, and "is to be exercised in aid of the Board's authority to restrain violations and as a means of removing or avoiding the consequences of violation where those consequences are of a kind to thwart the purposes of the Act." *Consolidated Edison Co.* v. *N. L. R. B.*, 305 U. S. 197, 236 (1938). The Board contends, in support of the provision in question, that the fear generated by the Company's campaign of intimidation will hinder lawful propa-

ganda activities during nonworking time on company premises, that so far as the record shows the Union has no other effective means of personally contacting all of the Company's employees, and that it cannot be unduly burdensome on the Company to provide the list. The broad notice requirements and the provision of Union access to the Company's bulletin boards are appropriately designed to dissipate the fear in the atmosphere within the Company's plants generated by its anti-union campaign. The requirement that the Company furnish a list of its employees is, as the Board points out, designed to do more than that—it is designed to afford the Union a means of personally contacting all of the employees. The Supreme Court has made it clear that the employer's obligations to his employees to allow them to discuss self-organization among themselves is much broader than the obligation owed nonemployee organizers; thus the access of a nonemployee organizer to the employer's property is governed by considerations different from those governing employee organizational activity on the employer's property. *N. L. R. B.* v. *Babcock & Wilcox Co.*, 351 U. S. 105, 113 (1956). Compare *N. L. R. B.* v. *S. & H. Grossinger's Inc.*, 372 F. 2d 26 (2 Cir. 1967). In this case, the problem is nonemployee access to an employer's list of employees, and we think that considerations similar to those governing nonemployee access to an employer's property must govern.

The employees' rights, which the Act was designed to protect, depend "in some measure on the ability of employees to learn the advantages of self-organization from

others." *N. L. R. B.* v. *Babcock & Wilcox Co.*, 351 U. S. at 113. Their ability to do this may in some cases turn on a union's gaining access to a list of an employer's employees, but we do not think the Board has shown that to be the case here. The Board argues that by enabling the Union to contact all employees outside the plant and make known its views in an atmosphere relatively free of restraint and coercion, the list requirement will resuscitate to some extent the organizational opportunities that have been extinguished. The policies of the Act call instead for a change in the atmosphere.

The Board refers us to its rule, announced in *Excelsior Underwear Inc.* and *Saluda Knitting Inc.*, 156 NLRB 1236 (1966), that where a representation election has been scheduled the employer must file with the Regional Director a list of all the eligible voters, which will then be made available to all parties. The need for an informed electorate, cited by the Board in establishing the *Excelsior Underwear* rule, and cited by the Fourth Circuit recently in holding such a list compellable in a District Court proceeding, *N. L. R. B.* v. *Hanes Hosiery Division—Hanes Corporation* (4 Cir., No. 11,202, decided October 3, 1967), is not present in the context of a union organizing campaign.

We deny enforcement to that provision of the order directing the Company to make available a list of its employees; otherwise the Board's petition for enforcement of the order (as modified with respect to the reading of the notice) is granted, and the petitions to review are denied.

DECREE OF THE COURT BELOW

United States Court of Appeals

FOR THE SECOND CIRCUIT

TEXTILE WORKERS UNION OF AMERICA, AFL-CIO,
Petitioner,
v.
NATIONAL LABOR RELATIONS BOARD,
Respondent.

No. 31,164

J. P. STEVENS & CO., INC.,
Petitioner,
v.
NATIONAL LABOR RELATIONS BOARD,
Respondent,
and
TEXTILE WORKERS UNION OF AMERICA, AFL-CIO,
Intervenor.

No. 31,245

DECREE ENFORCING AS MODIFIED AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD

Before:

LUMBARD, *Chief Judge*, SMITH *and* FEINBERG,
Circuit Judges.

THIS CAUSE came on to be heard upon the petitions of Textile Workers Union of America, AFL-CIO and J. P.

Stevens & Co., Inc. to review and set aside a certain order issued against J. P. Stevens and Co., Inc., its officers, agents, successors and assigns by the National Labor Relations Board on March 6, 1967 and upon the Board's answer and cross petition to enforce said order. The Court heard argument of respective counsel on October 10, 1967, and has considered the briefs and transcript of record filed in this cause. On December 27, 1967, the Court being fully advised in the premises, handed down its decision denying the petitions to review and enforcing as modified the Board's said order. In conformity therewith, it is hereby

ORDERED, ADJUDGED AND DECREED that J. P. Stevens and Co., Inc., its officers, agents, successors and assigns, shall:

1. Cease and desist from:

(a) Discharging, forcing the termination of, refusing overtime work to, or otherwise discriminating against employees in regard to hire or tenure of employment or any term or condition of employment in order to discourage membership in Textile Workers Union of America, AFL-CIO (hereinafter called the Union), or any other labor organization.

(b) Discharging or otherwise discriminating against employees for giving testimony under the National Labor Realtions Act, hereinafter called the Act.

(c) Engaging in surveillance of employees' activity in respect to union organization or giving the impression thereof.

(d) Interrogating any employee concerning such union activity by him or other employees in a manner constituting a violation of Section 8(a)(1) of the Act.

(e) Threatening its employees with discharge or other reprisals if they become or remain members of the Union or give any assistance or support to it.

(f) Altering its working conditions for the purpose of defeating the organizational efforts of its employees or of Textile Workers Union of America, AFL-CIO, or the efforts of any other labor organization of its employees.

(g) Encouraging or permitting employees to engage in antiunion activity while prohibiting employees from engaging in activity on behalf of the Union.

(h) Intimidating, coercing, encouraging, and assisting employees in withdrawing from the Union.

(i) Instructing employees to watch for and report to the Respondent the union activities of other employees.

(j) Requiring its employees to remove and prohibiting its employees from wearing Union insignia.

(k) In any other manner interefering with, restraining, or coercing its employees in the exercise of their right to self-organization, to form, join, or assist Textile Workers Union of America, AFL-CIO, or any other labor organization, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or mutual aid or protection, and to refrain from any or all such activities.

2. Take the following affirmative action which the Board has found will effectuate the purposes of the Act:

(a) Offer to the employees, whose names appear in the Appendix attached hereto, reinstatement to their former positions or to substantially equivalent positions, without prejudice to their seniority and other rights and privileges previously enjoyed; and make each such employee whole for any loss of pay he may have suffered by reason of the company's discrimination against him, in the manner described in "The Remedy" section of the Trial Examiner's Decision.

(b) Offer to James Rosemond and James Hill overtime work in accordance with the practice of offering these said employees overtime work prior to the date overtime work was first discriminatorily withheld from each of them, and make them whole for loss of overtime pay during the period of time overtime work was discriminatorily withheld from each of them, with interest at 6 percent per annum.

(c) Notify those employees listed in the Appendix attached hereto, if presently serving in the Armed Forces of the United States, of their right to full reinstatement, upon application, in accordance with the Selective Service Act and the Universal Military Training and Service Act, as amended, after discharge from the Armed Forces.

(d) Preserve and, upon request, make available to the Board or its agents, for examination and copying, all payroll records, social security payment records,

timecards, personnel records and reports, and all other records necessary to analyze the amounts of backpay due and the rights of employment under the terms of this Decree.

(e) Mail a copy of the attached notice marked "Appendix" to each employee, and post copies at all of its plants located in the States of North Carolina and South Carolina. Copies of said notice, to be furnished by the Regional Director for Region 11 of the National Labor Relations Board, Winston-Salem, North Carolina, shall be sighed by a representative of the Company. Thereafter, a copy shall be mailed by the Company to each of its employees working in its North Carolina and South Carolina plants, and additional copies shall be posted by it and maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Company to insure that said notices are not altered, defaced, or covered by any other material.

(f) Upon request of the Union, immediately grant the Union and its representatives reasonable access, for a 1-year period beginning with the issuance date of this Decree, to its bulletin boards and all places where notices to employees are customarily posted.

(g) Convene during working time, by departments and by shifts, all its employees in the plants where the unfair labor practices have occurred, and either a responsible official of the Company at Departmental Su-

pervisor level or above, or a Board Agent, shall read to department employees the contents of the attached Appendix.

(h) Notify the Regional Director, in writing, within 10 days from the date of this Decree, what steps have been taken to comply herewith.

FILED: MARCH 26, 1968.

J. EDWARD LUMBARD

Judge, United States Court of Appeals for the Second Circuit

J. JOSEPH SMITH

Judge, United States Court of Appeals for the Second Circuit

APPENDIX

NOTICE TO ALL EMPLOYEES

PURSUANT TO
A DECREE OF THE

United States Court of Appeals for the Second Circuit Enforcing as Modified an Order of the National Labor Relations Board, and in order to effectuate the purposes of the National Labor Relations Act, as amended, we hereby notify our employees that:

WE WILL NOT discharge, force the termination of, refuse overtime work to, or otherwise discriminate against employees in order to discourage membership in or support of the TEXTILE WORKERS UNION OF AMERICA, AFL-CIO, or any other labor organization.

WE WILL NOT discharge or otherwise discriminate against employees for giving testimony under the Act.

WE WILL NOT engage in surveillance of employees' activities with respect to union organization.

WE WILL NOT interrogate any employee concerning such activity by them or other employees.

WE WILL NOT threaten our employees with discharge or other reprisal if they become or remain members of the Union or give any assistance or support to it.

WE WILL NOT alter our working conditions for the purpose of defeating the organizational effort of our

employees or of TEXTILE WORKERS UNION OF AMERICA, AFL-CIO, or the efforts of any other labor organization of our employees.

WE WILL NOT encourage or permit employees to engage in antiunion activity while prohibiting employees from engaging in activity on behalf of the Union.

WE WILL NOT encourage and assist employees in withdrawing from the Union.

WE WILL NOT instruct employees to watch for and report to the Company the union activities of other employees.

WE WILL NOT prohibit employees from wearing Union insignia.

WE WILL NOT intimidate and coerce employees into withdrawing from the Union.

WE WILL NOT in any other manner interfere with, restrain, or coerce our employees in the exercise of their right to self-organization, to form labor organizations, to join or assist the aforesaid Union, or any other labor organization, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and to refrain from any or all such activities.

WE WILL offer to the employees named below immediate and full reinstatement to their former or sub-

stantially equivalent positions, without loss of seniority or other rights and privileges, and WE WILL MAKE THEM WHOLE for any pay they lost because of the discrimination against them, with interest.

Ben Suratt	Frank Wojeck
Hubert Varnadore	James Hill
John Fulbright	Leroy Reeves
Oliver Durham	Willis Young
Willard Page	Rufus Finley
Junior Hulsey	Donald Jones
W. O. Epps	John Little
Jake Owens	Leslie Hancock
Arthur Dean	Juanita Faulkenberry

We will offer to James Rosemond and James Hill overtime work in accordance with the practice of offering these said employees overtime work prior to the date overtime work was first discriminatorily withheld from each of them, and make them whole for loss of overtime pay during the period of time overtime work was discriminatorily withheld form each of them, with interest.

All our employees are free to become, remain, or refrain from becoming or remaining, members of TEXTILE WORKERS UNION OF AMERICA, AFL-CIO, or any other labor organization.

J. P. STEVENS AND CO., INC.
(Employer)

Dated..... By.....
(Representative) (Title)

NOTE: We will notify the above-listed employees, if presently serving in the Armed Forces of the United States, of their right to full reinstatement, upon application, in accordance with the Selective Service Act and the Universal Military Training and Service Act, as amended, after discharge from the Armed Forces.

This notice must remain posted for 60 consecutive days from the date of posting, and must not be altered, defaced, or covered by any other material.

Employees may communicate directly with the Board's Regional Office, 1624 Wachovia Bldg., 301 North Main St., Winston-Salem, North Carolina 27101. (Tel. No. 723-2911, Ext. 371).

DECISION AND ORDER OF THE NATIONAL LABOR RELATIONS BOARD

163 NLRB No. 24

UNITED STATES OF AMERICA

BEFORE THE

NATIONAL LABOR RELATIONS BOARD

Cases Nos.

11-CA-2435	11-CA-2525	11-CA-2549
11-CA-2464	11-CA-2450	11-CA-2550
11-CA-2484	11-CA-2518	11-CA-2552
11-CA-2485	11-CA-2519	11-CA-2564
11-CA-2487	11-CA-2531	11-CA-2584
11-CA-2496	11-CA-2532	11-CA-2506
11-CA-2501	11-CA-2534	11-CA-2720
11-CA-2503	11-CA-2539	11-CA-2725
		11-CA-2703

J. P. STEVENS AND CO., INC.

and

INDUSTRIAL UNION DEPARTMENT, AFL-CIO

DECISION AND ORDER

On January 13, 1966, Trial Examiner Horace A. Ruckle issued his Decision in the above-entitled proceedings, finding that the Respondent had engaged in and was engaging in certain unfair labor practices within the meaning of the National Labor Relations Act, as amended, and recommending that it cease and desist therefrom and take certain affirmative action, as set forth in the attached Trial

Examiner's Decision. The Trial Examiner also found that the Respondent had not engaged in other unfair labor practices alleged in the complaint and recommended dismissal of those allegations. Thereafter, the Respondent, the General Counsel, and the Charging Party filed exceptions to the Decision and supporting briefs.[1]

The National Labor Relations Board has reviewed the rulings of the Trial Examiner made at the hearing and finds that no prejudicial error was committed. The rulings are hereby affirmed. The Board has considered the Trial Examiner's Decision, the exceptions, the briefs, and the entire record in these cases, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner, with the modifications noted below.[2]

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[1]The Charging Party's request for oral argument is hereby denied as the record, the exceptions, and the briefs adequately present the issues and the positions of the parties.

[2]The Trial Examiner's Decision contains certain inadvertent errors and omissions which are corrected, as follows: *TXD* p. 4, line 33, "July 23, 1964", is changed to "July 24, 1964"; p. 4, line 37, "8(b)(4)" is changed to "8(a)(4)"; p. 7, line 4, "March 22, 1965", is changed to "March 17, 1965"; p. 7, line 43, "March 19, 1965", is changed to "March 16, 1965"; p. 13, line 42, "September 10", is changed to "September 11"; p. 15, line 2, after the sentence ending with the word "cloth" add the following, "Durham worked his regular shift the morning of September 11, during which he was shown a personnel action report written by Cheek for 'staying in waterhouse too long' "; p. 15, line 15, "on his first shift" is changed to "after his second shift"; p. 18, line 41, "Hall" is changed to "Hulsey"; p. 21, line 29, "Thomas' " is changed to "Corbett's"; p. 23, line 60, after the word "about" add the words "these complaints"; p. 25, lines 60-61, strike the entire sentence beginning with "When" and ending with "again" and substitute therefor the following, "Later, Griffin spoke to Dean about this incident and told Dean not to do it again."; p. 25, line 61, "McKee" is changed

The Trial Examiner found that the Respondent had unlawfully discharged 19 of the employees named in the complaint, and further discriminated against another employee in the assignment of overtime work. He also found numerous instances of interrogation by the Respondent of employees about their union activities, threats by the Respondent concerning unionization and employees' union affiliation, and other conduct contravening Section 8(a)(1) of the Act. We adopt the Trial Examiner's conclusions as to all but 3 of the alleged discriminatees, and modify his decision in the respects hereinafter noted.

8(a)(1) Conduct

The Trial Examiner inadvertently failed to find specifically that certain conduct of the Respondent, which he described, violated Section 8(a)(1) of the Act, although he did make general findings to this effect in his "Conclusions of Law." In order to clarify his Decision, we list all the incidents mentioned in his Decision,[2] which, in context, we find violated Section 8(a)(1).[3]

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to "Dean"; p. 28, line 10, "discharge" is changed to "appearance at the hearing"; p. 31, line 50, "excepted" is changed to "exception"; p. 32, line 45, "take" is changed to "talk to"; p. 42, line 47, "results" is changed to "rounds"; p. 44, line 14, add a period after the word "supper"; p. 44, line 15, before the first word "and" on the line, add the following, "They then went to the waterhouse for a smoke"; and p. 44, line 57, "Finley's" is changed to "Little's".

[2]Only those incidents specifically alleged in the complaint to violate Section 8(a)(1) are discussed herein.

[3]All page and line references are to the Trial Examiner's "slip" Decision. We hereby direct that upon publication of our Decision in the Board's volumes, the page references be converted accordingly.

Threats of reprisals, promises of benefits, and related acts of interference: TXD p. 17, lines 27-38, Hawkins' statement to Page that the shift and general overseers were "giving him [Hawkins] hell" because of the Union leaflet with Page's name on it, Hawkins' reproach of Page and two other employees for not waiting before they "came up with something like that [the leaflet]", and Hawkins' reminder that Page's name appeared on a Union leaflet, made in response to Page's query as to why his supervisors were "mad at" Page; p. 17, lines 38-40, Hawkins' request that Page speak to Hall to try to get Hall to quit the Union, and to get himself out, made at the time Hawkins remarked that he had "good things in mind for" Page and Hall; p. 17, lines 45-49, Hawkins' statement, in the context of a discussion of the Union, that the Respondent could fire Page just about anytime it wanted, that Hulsey had "left himself open" dozens of times to discharge, and now it looked like Hawkins was going to have to run them off; p. 17, lines 49-51, Hawkins' suggestion that Page's son, Richard, who had left the Respondent's employ, could get his job back if he would get out of the Union; p. 17, lines 53-56, Hawkins' statement to Hulsey, Page, and Hall that they had "messed [Hawkins] up" by signing union cards, that they were the best workers Hawkins had and he was "going to have to do something about it"; p. 18, lines 1-8, Hawkins' query of Page as to whether he, Hulsey, and Hall had made up their minds about getting out of the Union, and Hawkins' statement that he would not hit them "below the belt" and that before he would fire them he would "warn" them; p. 19, lines 37-43,

Greer's query of Epps as to whether he had seen Lollis about withdrawing from the Union, and Greer's suggestions that Epps do so, as well as Greer's prognostication that "something was going to happen" and a man of Epps' age "can't get a job just anytime anywhere he wants it"; p. 42, lines 36-38, Jones' statement to Spearman that if they did not keep the Union out of the plant it would be a mess, made after Jones asked Spearman if he was going to vote in the election.

Interrogation: TXD p. 20, lines 47-51, Corbett's inquiry as to Owens' whereabouts the previous day, a Sunday, on which Owens had attended a Union meeting; p. 41, lines 34-40, Waldrup's query of Henderson as to whether Union organizer Stamps had been to Henderson's home and whether Henderson had run Stamps off; p. 42, lines 27-31, McCall's questioning of Spearman as to whether union people had been to see Spearman; and p. 42, lines 33-36, Jones' questioning of Sherman about Sherman's companion at the Union meeting.

Creating the impression of surveillance: TXD p. 41, lines 42-50, Waldrup's revelation to Henderson that Waldrup knew that Union organizers had been to Henderson's home, that an organizer had opened the gate for Henderson's wife on one occasion, and that the Respondent knew when organizers came to an employee's home and "what kinds of cars they [the organizers] drive."

Union insignia: TXD p. 7, lines 26-34, Carter's order that Hubert Varnadore go home and take off his "AFL-CIO" T-shirt.

Attempt at constructive discharge: TXD p. 32, lines 19-29, Brinkley's or Elrod's request that Hill resign his employment, made at the time Hill was shown a writeup which related to protected union activity.

Discriminatory application of a no-solicitation rule: TXD p. 32, lines 36-51, Brinkley's warning that Hill would be discharged for "bothering" employees about the Union on the job, while at the same time permitting anti-union employees to harass Hill at work by following Hill back and forth and asking him if it was his name on the Union leaflet and by propounding other questions about the Union.

8(a)(3)

Of the 19 employees the Trial Examiner found were discharged in violation of the Act, we affirm him as to 17. We do not agree with the Trial Examiner that the General Counsel has proved by the preponderance of the evidence that Wylie Hill and William Coker were unlawfully discharged. In addition, contrary to the Trial Examiner, we find that Juanita Faulkenberry was discharged in violation of Section 8(a)(4).

Wylie Hill

From 1952 until July 16, 1964, when he was laid off, Hill had worked for Respondent in the yard of Republic plant nos. 1, 2, and 3 as a laborer under the supervision of Edward Locklair, outside overseer, and Harold Cloud, yard leader.

Hill joined the Union in the summer of 1963, and informed Locklair of this fact shortly after Thanksgiving,

1963. Shortly thereafter, Supervisor Locklair told Hill that he should not sign a union card and that if he did so, he would lose his job. Hill testified as a General Counsel witness at a hearing on March 31, 1964, in *J. P. Stevens and Co., Inc.*, 157 NLRB No. 90.[4]

Hill's principal duty was to pick up trash from trash bins at the three plants by hand or pitchfork and place the trash in a dump truck, by which it was hauled to a trash pile. Working with Hill were Floyd McCrorey, who drove the dump truck and assisted in picking up trash, and Samuel Q. Mahoney, who did the same work as Hill. From time to time Hill also mowed the lawns, as did Mahoney and McCrorey, and helped unload cotton from railroad cars and store it in the warehouse, as did about 6 or 7 other laborers.

In 1962, the Respondent began consideration of methods for streamlining the collection of trash, and, in October or November 1963, for the first time began experimenting with a type of trailer which it believed would expedite handling of trash. Under this new method of collection, 7 trailers are placed in the areas around the warehouses where the trash bins had been, and trash is dumped directly into these trailers. Periodically, a pickup truck driven by one of the yard crew is attached in turn to each trailer. After spending about 4 or 5 minutes cleaning up around the trailer, the driver hauls the trailer to a trash pile, where he dumps the trash using a winch attached to the

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[4]The above-cited *Stevens* case is hereinafter referred to as *J. P. Stevens I*.

trailer. He then returns the trailer to its appointed spot. This method of trash collection requires the employment of only one man, the driver, as compared to the three men needed under the old method.

At first, the Respondent used only two of the new trailers. Then, on or about July 4, 1964, it employed for the first time a full complement of seven trailers, eliminating completely the dump-truck method of trash collection and with it, Hill's job.

Hill was discharged on July 16. Thereafter, Mahoney was assigned the job of hauling the trailers and McCrorey, with one helper, McClintock, was assigned to hauling cotton and staple from the warehouse to the mill and unloading it at the mill. Subsequent to Hill's layoff the Respondent hired two new employees, Price and Watson, for various laborer jobs in the yards. Others in the yard with less seniority than Hill were kept on after Hill was discharged.

The Respondent's explanation for Hill's layoff and the retention of others with less seniority, given to Hill at the time of his discharge, was that all the available laborer jobs required a knowledge of reading and writing or an ability to operate complex mechanical equipment. The Respondent asserted that Hill was illiterate, and was unable to operate the complex equipment, whereas all the other laborers could read and write and could run such equipment.

According to Locklair, at the time of Hill's discharge he had considered Hill for two or three different jobs. One

involved operating a forklift, in which the driver moves levers controlling the blades of the lift and manipulates a gear shift. Although, according to Yard Leader Cloud, all laborers were given the chance to learn to use such equipment, Hill had never availed himself of this opportunity. Furthermore, Locklair testified that, sometime before Hill's discharge, the Respondent began using a riding mower with three forward gears and one reverse gear, which replaced the power mower Hill previously had used. Hill was "put on" this more complicated device, but could not operate it. From this, Locklair concluded that Hill would be unable to maneuver the even more difficult forklift.[5]

Another job open at the time Hill was discharged involved bailing waste. Locklair explained that for this job it was necessary to read the classification on seven different bins in which the different types of waste were placed, as well as weigh the waste and log it in a book. Locklair rejected Hill for this job because of his inability to read and write.

Locklair was unable to place Hill in McCrorey's or Mahoney's job driving a truck as this required a driver's license which Hill did not have. Nor could Hill do McClintock's job, assisting Mahoney on the dump truck transporting cotton and staple, as this job involved reading the names of at least seven grades of cotton, and writing down numbers for the staple.

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[5]According to the testimony of employee Mahoney, Hill had admitted to Mahoney that he could not operate a forklift or the riding mower.

Hill's illiteracy had come to the Respondent's attention much earlier when Hill was assigned to transporting cotton bales by handtruck from railroad cars to a weighing platform, prior to storage in the warehouse. Each bale had a tag with a number which the laborer transporting the bale was required to call out to either Cloud or Locklair, who stood by the scales and recorded the weight of the bale. Hill was unable to call out the numbers.[6] Thereafter, Hill was assigned on one or two occasions to moving the bales from the weighing platform to the warehouse, a job which involved no reading or writing, but which, the record shows, was not then a full-time job, and one which is now accomplished primarily with forklifts.

In concluding that the reason offered by the Respondent for not placing Hill in another job—that Hill was illiterate and all other jobs required reading and writing—was a pretext, the Trial Examiner emphasized that Mahoney, who was retained, "was little if any more literate than Hill, and others of the 20-25 employees doing labor work must similarly have been low in the educational scale." The record evidence is to the contrary. Mahoney, who, unlike Hill, had a driver's license, testified in detail as to the reading and writing requirements of the above-described job hauling cotton and staple. Nothing in his testi-

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[6]Hill testified that he could not read papers or signs but that he could read numbers. Hill admitted, however, that he had not read the numbers on the bales of cotton. And, he did not otherwise contradict Locklair's and Cloud's testimony regarding this part of his work. As for Hill's writing ability, the record shows that although Hill was able to print his name, he usually signed his name with an "X".

money indicated that he was illiterate. Frank Beaty, another laborer, testified that he filled out a job application which asked what grade he had completed in school and which had some elementary mathematics problems he was required to solve. Cloud testified that all the men hired after Hill was laid off could drive a truck and a "tow motor", could stencil cotton, which involves reading, and, indeed, could do "any job" in the yard. Finally, Hill himself admitted that all others with less seniority than he who were retained could read and write.

The Trial Examiner also found that the jobs performed by the laborers "required no ability to read and write, and Hill had on occasions performed most of them." The evidence as detailed above does not justify this conclusion. Thus, the Respondent submitted uncontroverted evidence that the jobs open required some degree of literacy or an ability to operate complicated machinery, and that all other retained and newly hired employees could read and write and operate such devices as a forklift and riding mower. In these circumstances, and notwithstanding the Respondent's earlier threat to Hill that he would lose his job if he signed with the Union, we are not convinced that Hill's discharge was discriminatorily motivated. Accordingly, we shall dismiss the complaint as to Hill.

Juanita B. Faulkenberry

Faulkenberry worked as a weaver in Republic plant no. 1 for 12 or 13 years until her discharge on October 23, 1964. Her 30 years of experience as a weaver also included jobs for 2 or 3 years at the Republic plants nos. 2 and 3.

Faulkenberry's work record with the Respondent was a good one until a time just prior to her discharge. Thus, when she was working at plant no. 1 she was transferred on a trouble-shooting assignment to a set of looms at plant no. 2 to get the looms "straightened out." She helped to reduce the percentage of seconds on these looms. While at plant no. 3, Faulkenberry was complimented by Superintendent Burns for her "nice work" on a difficult style of cloth. Soon after she came to plant no. 1, she was the first weaver in 18 months who had less than 5 percent seconds, and was complimented by the general overseer of weaving, Arthur Justus, for her good work.

On March 27, 1964, Faulkenberry testified at the first hearing as a witness for the General Counsel. Her testimony, as reported by the Trial Examiner,[7] was that her loom fixer, Ralph Harrison, alleged to have been discharged in violation of Section 8(a)(3), was "working very hard" on a job that had been left "in real bad shape" and that although she had, on occasion, complained to her immediate supervisor, Simean Dawkins, about Harrison's slowness in responding to flags, she did not do so "too much". Faulkenberry's testimony, therefore, in part contradicted that of Dawkins, which was that he had "many" complaints from Faulkenberry about Harrison. Her testimony concerning Harrison's hard work was relied on by the Trial Examiner in discrediting Dawkins' and Justus' explanation for the discharge—that Harrison was a poor worker—and in finding instead that the discharge was discriminatorily motivated.

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[7] *J. P. Stevens and Co., Inc.*, 157 NLRB No. 90, *TXD* p. 13.

According to Faulkenberry and her then loom fixer, Donald Carpenter, several weeks after Faulkenberry testified, Justus watched her more closely while she did her normal work. Carpenter was discharged during the summer of 1964 and was replaced by Billy Sneed, a learner-fixer who had never before fixed looms. In September, with Sneed fixing on almost all her looms, Faulkenberry was given a very difficult style of cloth to weave which made it harder for her to "match filling" and to start up her approximately 20 looms. At about this time, Peterson, the weaver in charge of Faulkenberry's looms on the shift preceding Faulkenberry's, complained that the job was too hard for her and was transferred to another job. Darby was assigned to replace Peterson. Unlike Peterson, Darby did not leave the looms in good working order. Faulkenberry's uncontradicted testimony on this point is as follows:

> . . . [S]he [Darby] would leave the warp in such a mess it would take me two or three hours to start them up . . . we'd have to move ends from the selvage over to the center, or to the body of the cloth and when she would move those ends she would break off the draw wires and leave them in, the ends would run up in the draw wires and mat up sometime. It would take me ten or fifteen minutes to cut out the mat up and get one loom started up.

The combination of a learner loom fixer, a difficult style, and a weaver on the preceding shift who left the looms in "a mess", a set of circumstances which no other weaver

was confronted with, resulted in a decrease in Faulkenberry's production to between 75 and 80 percent.

On a number of occasions Faulkenberry complained to her supervisors about Darby. She also requested a better loom fixer and asked Justus to put her on a particular better set of looms. Dawkins and Justus took no action with respect to her requests, other than promising to speak to Darby. Dawkins told Faulkenberry that the Respondent could not find experienced loom fixers, and Sneed remained on her job. Noe, a weaver with less seniority than Faulkenberry, was transferred to the better looms because, according to Justus, she was a "better quality weaver" and the Respondent was having trouble with the particular style on those looms. Noe was assigned to the looms despite the fact that her production, on one occasion, had been as low as 77 percent, and her seconds had been as high as 34 percent, much higher than Faulkenberry's and far above what the Respondent considered satisfactory.[8] As indicated above, Peterson, the second shift weaver, had also been transferred from the difficult style at her request, but no action was taken on Faulkenberry's request for a similar transfer.

On the morning of October 16, 1964, about a week before her discharge, Faulkenberry tolk Dawkins that on three occasions she had flagged a loom that had been standing idle several hours, but that it had not been fixed. Later that same day, Dawkins gave Faulkenberry a per-

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[8]Noe was not, however, given a personnel action report for poor quality or low quantity on this occasion.

sonnel action report for low production. This was the first warning, oral or written, Faulkenberry had ever received. When Dawkins showed Faulkenberry the writeup, she reminded him that she did not have an experienced loom fixer, whereupon Dawkins admitted that he knew this.

The last week Faulkenberry worked she was assigned an experienced loom fixer, Marvin Sheehane. Her production increased to an acceptable 88 percent. Nevertheless, on October 23, 1964, she was discharged "for low production" and "production changes" which, according to the Respondent, necessitated a reduction in the number of weavers from 63 to 60. Justus chose to eliminate three weavers who were the lowest producers: Flynn, Reufelt, and Faulkenberry. Justus admitted that Flynn, whom he laid off, had been in and out of the Veterans Hospital and was "a sick man". Reufelt was not laid off, but instead was transferred to a harness cleaning job which Justus admitted Faulkenberry could do. He did not, however, attempt to find out whether Reufelt had seniority over Faulkenberry, and, indeed, recommended on Faulkenberry's termination slip that she not be considered for another job in the plant, despite her substantial seniority and apparently unblemished record in jobs as a smash hand and harness cleaner. Although admitting that job assignments and layoffs are usually made on the basis of seniority, Justus offered no explanation for his preference of Reufelt for the harness cleaning job except that Reufelt was a learner-weaver who had previously done harness cleaning. Neither did he explain his determination that Faulkenberry was not suitable for another nonweaving

job. At the same time Justus discharged Faulkenberry, who never had been laid off before, he retained at least 10 other weavers with less seniority than Faulkenberry and whose production, in at least one instance, was, according to Justus, only "a little better" than Faulkenberry's.

The Trial Examiner credited Justus' testimony that he was not aware of the increase in Faulkenberry's production during her last week until after her discharge. However, the Trial Examiner overlooked the fact that after her discharge Faulkenberry had been to the personnel office asking for work. During this time the Respondent's force of weavers was further decreased to 57 and then increased to 60. The increase of three was made by hiring one weaver, Revis, from the outside, by assigning a trainee, Wright, to a weaving job, and by hiring back Otis Varnadore, who had less seniority than Faulkenberry and who had previously quit. Faulkenberry was not offered reemployment despite the fact that Justus must have known by then of the material increase in her production during the last week she worked.

In sum, the record shows that: (1) Faulkenberry's testimony at the first hearing was damaging to the Respondent's case and contradicted that of her supervisors who were later responsible for her discharge; (2) until the summer of 1964 Faulkenberry had a good work record with the Respondent, and had been complimented by her supervisors; (3) Faulkenberry had seniority over many other weavers; (4) after the first hearing she was watched

more closely by her supervisors; (5) prior to her discharge Faulkenberry's request to be transferred to another and easier set of looms was denied, whereas the request of Peterson was granted; (6) at the time of her discharge the Respondent was aware that the special circumstances of a learner fixer, a difficult style, and a weaver on the preceding shift who left Faulkenberry's looms in "a mess", adversely affected her production; (7) the Respondent made no attempt to determine whether Faulkenberry had seniority over Reufelt for the harness cleaning job or to place Faulkenberry in other nonweaving work; and (8) the Respondent did not offer Faulkenberry reemployment when it later increased the number of weavers, although it knew of the material increase in her production during her last week and of her desire to work, but instead hired weavers with less seniority and experience than Faulkenberry. In these circumstances we find that the Respondent's assigned reasons for Faulkenberry's discharge were pretexts and that the real reason was that she had given testimony under the Act unfavorable to the Respondent. Accordingly, we find that by discharging Juanita Faulkenberry, the Respondent violated Section 8(a)(4) of the Act.

William E. Coker

Coker was employed as a weaver on the second shift at the Respondent's Estes plant at the time of his discharge on May 25, 1965. The plant superintendent was V. T. Jenkins, the general overseer of weaving was J. C. Blackston, and the assistant overseer of weaving, Coker's immediate supervisor, was Shannon McCall.

In the 13 years prior to his discharge Coker had received 12 personnel action reports. Three of these were for work of poor quality. Eight specifically mentioned Coker's poor inspecting. Thus, on May 21, 1956, long before he became active in the present union campaign, Coker was written up because he "ran a wrong draw on loom No. 437 [of] 36 yds. With closer inspecting this would have been caught. Mr. Coker must inspect closer." Coker received similar personnel action reports on September 20, 1956, and June 11, 1958. On May 23, 1961, before his union affiliation and activity became known to the Respondent, Coker received a writeup because he, "ran loom No. 274 with thread out (77 yards). With proper inspection this thread out would have been caught." Thereafter, as more fully set forth in the Trial Examiner's Decision, during the summer and fall of 1964, Coker's name was listed on Union leaflets as a member of the Union organizing committee, and a prounion letter he had written to the *Saluda Valley Record*, that was rejected by the newspaper, was printed in a leaflet distributed by the Union in October 1964.[10]

In March 1965, after noting the high percentage of seconds woven at the Estes plant, Jenkins spoke to Blackston about better inspecting. Weavers had been informed prior to this time, and were thereafter again told, of the specific steps the Respondent requires for inspecting cloth. Soon after a weaver comes on a shift he is required

[10]Coker was also a Union observer at a NLRB representation election among the Respondent's employees at the Estes plant on May 13, 1965.

thoroughly to inspect each of his looms by using a light to examine the cloth for defects. A weaver must: (1) stop the loom; (2) bend over and inspect the face of the cloth; (3) bend over and examine the ends of the roll of cloth and the roll itself; (4) check the cutter; and (5) if there are no defects or if the loom does not need further attention, initial and date the cloth. If, however, the loom is making a defect in the cloth, the weaver must not initial the cloth, but instead must stop or flag the loom, or take other appropriate action.

It is not disputed that Coker knew of this procedure and had followed it at times in the past. Nevertheless, on several occasions prior to March 26, 1965, McCall warned Coker that he was not inspecting properly. Then, on March 26, more than 5 months after the distribution of Coker's letter, McCall gave Coker a writeup for high seconds "due to poor inspection." Again, on March 30, 1965, Coker received a personnel action report, in part, for "not inspecting cloth like he should." Thereafter, Coker improved a little but then, according to McCall's uncontraverted testimony, Coker "dropped back" to a point where he was not stopping each loom as required. Finally, on May 15, 1965, McCall wrote Coker up for poor inspection. At this time, McCall specifically outlined to Coker the steps for inspecting which Coker was supposed to follow. McCall's testimony was that after May 15 Coker "got worse" at inspection.

On May 24, 1965, according to Coker's own testimony, he began inspecting looms at the beginning of his shift, after starting some looms. Coker came to loom no. 46 that

had a new warp tied on. This warp had been running about 4 yards of cloth (less than 1 hour's worth) from the previous shift. Coker looked only at the face of the cloth and did not notice anything wrong; he thereupon initialed it. Coker stated that he did not stop the loom or follow the other steps of the inspection procedure, but that, as the loom had a new warp, he intended to come back to it after he finished inspecting his 61 looms.

While Coker was attending to his other looms, McCall came to loom no. 46 and noticed some torn selvage on the loom. The torn portion of the cloth was going around a separate roll which was causing a "build-up", a situation that could result in extensive damage to the loom. McCall cut off that particular defective part of the cloth and instructed the cloth doffer later to doff the cloth and bring McCall the torn portion. Blackston was shown this torn portion the next day, May 25, 1965. After noting that Coker's initials were on the cloth and that the torn portion was running at the time Coker initialed it, Blackston concluded that it was apparent that Coker had not properly inspected the cloth, but had initialed it anyway. He thereupon asked for, and received, Jenkins' permission to discharge Coker, whereupon Coker was called into Blackston's office and terminated. Coker's termination slip lists the "details" of his discharge as follows: "This employee allowed a loom to run tearing up cloth. He had initialed cloth as if he had inspected but had not. He has got so he will not follow instructions and warnings."

The Trial Examiner found that as "the end purpose of a weaver's checking his cloth is to help minimize the num-

ber of seconds he produces," and as "Coker's seconds were average or fewer than average," he could not attach much importance to Coker's failure to inspect properly. The Respondent contends that it is important for its weavers to follow the prescribed methods of job performance whether or not their particular seconds are high or low. Jenkins testified that if inspection procedures were not followed the Respondent's "whole quality program would go haywire." Jenkins stated what impact the failure of one weaver to follow procedure would have on the other weavers:

> . . . [I]t would certainly have an effect on other weavers, due to the fact that they would say, well, we have so much time allotted for inspection on our job; this fellow is going to spend ten minutes, and I have to spend forty; there's something wrong.

Similarly, Blackston emphasized the need for uniform inspection procedures regardless of whether unorthodox methods of inspection might sometimes result in fewer seconds for a particular individual:

> . . . [I]f one is doing it [inspecting in accordance with the procedures outlined] and the other one is not, then you can see it all over the weave room when a person is not inspecting properly, if you let one go on and on and on that way, before long you've got them all doing the same thing; and that's what happened; McCall complained to me that Mr. Coker was inspecting looms, walking up the alley with a light shining from one to the other, this way, not even stopping the loom off; well,

other weavers could see what he was doing; their jobs connect to his.

We are persuaded, in view of the above, that the Respondent regards as important adherence to its prescribed inspection methods. Further, the record shows that the Respondent's concern for Coker's lax inspection methods predated his union activity, and that Coker continued his unorthodox inspection methods after he joined the Union. In the three months prior to his discharge he received three personnel action reports for poor inspecting. At the time of the last of these reports he was specifically told what he must do to inspect properly. Coker disobeyed instructions, and the result was a torn selvage that could have seriously damaged a loom, which Coker nevertheless initialed as free from defects. In view of the above, we are not persuaded that the Respondent's reason for discharging Coker—that he failed to inspect properly—was a pretext. Accordingly, we shall dismiss the complaint as to Coker.

We also modify the Trial Examiner's Decision in the following respects:[11]

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[11]The Trial Examiner inadvertently failed to make specific findings that the following employees were discharged in violation of Section 8(a)(3) of the Act: Oliver Durham, W. O. Epps, Frank Wojeck, James Hill, Leroy Reeves, Rufus Finley, and Donald Jones. We hereby find that these employees were discharged in violation of Section 8(a)(3) of the Act. We also find that James Rosemond was denied overtime in violation of Section 8(a)(3) of the Act. Although the Trial Examiner's "Conclusions of Law" include a finding that the Respondent discriminated against Ben Suratt, Hubert Varnadore, John Fulbright, and Willis Young for giving testimony under the Act, the Trial Examiner failed to so find in discussing the individual case of each of these employees. We correct this oversight and hereby find that the above four employees were discharged in violation of Section 8(a)(4) of the Act.

With respect to the employment history of Ben Suratt, the Trial Examiner did not mention two personnel action reports received by Suratt. One, on February 3, 1964, was for inefficiency, and the other, on June 25, 1964, was for smoking outside the mill.[12] The Trial Examiner also stated that Suratt, Hyatt, and Hubert Varnadore began wearing Union buttons and T-shirts at work, and that "Carter sent them home to take the insignia off." While all three employees wore the insignia apparently on a number of occasions, the record shows that Carter told only Varnadore to go home and take the T-shirt off. Neither Suratt nor Hyatt was wearing a Union T-shirt when Carter spoke to Varnadore. These modifications, however, do not affect our judgment that Suratt was discharged for his union activity. Thus, it is still true, as the Trial Examiner found, that Suratt never received a personnel action report until his name had been posted as a Union member and that his discharge directly followed a resumption of his union activity, evidenced by his wearing of union insignia.

On page 10 of his Decision, lines 55-56, in discussing the discharge of John Fulbright, the Trial Examiner states that, "there is no evidence that Fulbright [distributed leaflets in the plant] . . . except during breaks and in the washroom". The testimony of employee Hiot was that he told Supervisor Scruggs that Fulbright had asked Hiot to pass leaflets "out over job", but that Hiot did not do so.

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[12]The Trial Examiner did note that Suratt received a personnel action report on July 22, 1964, but incorrectly stated that this report was issued by Brannon. The report was actually written and signed by Carter.

Employee O'Bryant testified that he saw Fulbright put leaflets in rolls of cloth, in the shuttle boards, and on work benches, but that when Scruggs asked O'Bryant who had been distributing the leaflets O'Bryant replied that he did not know. We correct these omissions by the Trial Examiner, but find that they do not have a significant impact on the Trial Examiner's findings that the Respondent's 12-day investigation to determine where the leaflets originated was "barren of result". The only information received by the Respondent came from Godfrey and Hiot, neither of whom had actually distributed any leaflets, and whose statements to the Respondent hardly establish that Fulbright actually distributed leaflets during working hours. We note, furthermore, that although Scruggs purported to conduct an "investigation" as to the origin of the leaflets, he failed to question the alleged culprit, Fulbright, although Fulbright was an employee of 13 years service to the Respondent, and even refused specifically to state to Fulbright at the time of his discharge that he was responsible for distributing the leaflets. Finally, we find it significant that it was not uncommon for leaflets to be left around the plant, but that the record does not show that the Respondent had ever before conducted an "investigation" as to the origin of such leaflets and, indeed, had apparently tolerated the presence of union literature in the plant. On all the evidence, we agree with the Trial Examiner that Fulbright, who was dismissed less than a month after he gave testimony on behalf of the General Counsel at the hearing in *J. P. Stevens I* was discharged in violation of Section 8(a)(3) and (4) of the Act.

In discussing the discharges of Willard Page and Junior Hulsey, the Trial Examiner stated that Cothran "saw Page and Hulsey leave the washroom about 10 minutes before midnight and get on the freight elevator, but that he did not know where they went." The Respondent contends that the record shows that Cothran told Hawkins that he had "seen them [Page and Hulsey] leave". On cross examination, however, Cothran clarified this last statement.

A. . . . he [Hawkins] asked me had I seen them; that is, he didn't ask me where they were.

Q. What'd you say?

A. I told him, yeah, I'd seen them leave.

Q. Leave where?

A. Leaving the picker room.

Q. You don't know where they went when they left the picker room, do you?

A. Well, it is not up to me to find out where they went.

Trial Examiner: Your answer is no, is that it?

The Witness: Yes, sir.

Thus, the record confirms the Trial Examiner's findings concerning Cothran's testimony, which we find to be vague and of little value.

But even if the foregoing testimony may be read as suggesting that Page and Hulsey may have left the plant 10 minutes early, the record also shows that others in Page's and Hulsey's crew had, on occasion, left early with-

out being reprimanded or discharged; indeed, it affirmatively appears that Hawkins had instructed the crew in the past to "ease out" 2 or 3 at a time starting at 11:20, 40 minutes before the end of the shift. In view of the above, we agree with the Trial Examiner that the reason offered for the discharges of Page and Hulsey was a pretext and that the real reason was their union activity.[18]

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[18]In ordering that Page be reinstated, the Trial Examiner did not discuss an incident that occurred in the picker room office at the time of Page's discharge. According to Page, on the day of the discharge Hawkins called Page into the office where Hawkins questioned him as to where he had been at 11:50 the previous night. Page replied that he was on the job whereupon Hawkins said he had checked and Page was not there. Then Page said, "you're lying, you wasn't even out there. . . ." Later, after Page and Hulsey were told they were being discharged for leaving early, Page "flew mad" and "cussed him [Hawkins] out with everything . . . [he] could think of", including calling Hawkins "a son of a bitch and a bastard". Hawkins' testimony was that Page first called him "a damned liar", or claimed that Hawkins "was telling a damned lie", and later called him a "son of a bitch", and told Hawkins that he "was going to smash [his] head in or break [his] legs".

While we do not condone this kind of employee misconduct, considering all the circumstances of these cases, and particularly the Respondent's numerous and flagrant unfair labor practices, we do not on balance find it sufficiently serious to warrant denial of reinstatement and backpay. Thus, there is no evidence that prior to, or after, the incident in the office Page made intemperate remarks or engaged in physical violence. Just prior to the incident in question Hawkins had accused Page of not being on the job (the Trial Examiner found to the contrary) and had announced Page's discharge, which was discriminatorily motivated. With good justification, therefore, Page believed he had been treated unfairly. The Fourth Circuit Court of Appeals recently held in similar circumstances that:

> An employer cannot provoke an employee to the point where she commits such an indiscretion as is shown here and then rely on this to terminate her employment. . . . The more extreme an

In finding that the discharge of Jake Owens was discriminatorily motivated, the Trial Examiner overlooked a final incident preceding the discharge. On May 5, one day before Owens' discharge, he was instructed by Thomas to clean up a warehouse platform by picking up paper in the yard around the platform, emptying the trash cans, and putting certain tie bands in a scrap bin. When Thomas checked to see if Owens had done the job, he found that Owens' crew had picked up paper around the platform but had not yet cleaned off the platform itself. It was then that Thomas decided to terminate Owens. This last incident appears to be trivial, however, when considered in the context of Owens' job history. Owens had worked for the Respondent for 17 years, during most of which time his work performance, the record shows, was good. For about 2½ years preceding his discharge, Owens had been a leadman directing a crew of about five employees. According to Thomas, beginning in January 1965 Thomas spoke to Owens on at least three occasions about specific jobs Owens' crew had been directed to do but which had not been accomplished quickly enough. On none of these occasions, however, was Owens issued a personnel action report, which indicates that the Respondent did not con-

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employer's wrongful provocation the greater would be the employee's justified sense of indignation and the more likely its excessive expression. . . . [R]efusal to reinstate her would put a premium on the employer's misconduct.

N.L.R.B. v. *M & B Headwear Co.*, 349 F. 2d 170 (C.A. 4); Cf. *Local 833, UAW* v. *N.L.R.B. (Kohler Co.)*, 300 F. 2d 699 (C.A.D.C.). Accordingly, we agree with the Trial Examiner that Willard Page should be reinstated with backpay. *J. P. Stevens and Co., Inc.*, 157 NLRB No. 90, footnote 10.

sider these very important. Then, on May 3, Corbett interrogated Owens about Owens' attendance at a Union meeting held the previous day, an interrogation which we have found violated Section 8(a)(1) of the Act. On May 5 Thomas observed Owens' slowness in finishing the above-described platform cleaning job. Although Owens had completed a part of this work assignment, Thomas, on May 6, summarily decided to discharge Owens. Thus, Owens' discharge came only 4 days after his appearance and speech at a Union meeting. Under all the circumstances, we do not believe that the Respondent considered the platform cleaning incident any more serious than those matters Thomas previously had discussed with Owens. Further, we find it significant that Owens had done good work for the Respondent for almost 17 years and that the Respondent was willing to tolerate Owens' shortcomings for a period of 4 months preceding his discharge, but not after he was seen at the Union meeting. Accordingly, we agree with the Trial Examiner that the assigned reason for Owens' discharge was a pretext and that the real reason was his union activity.

The Trial Examiner found that the complaints about Frank Wojeck received by Dempsey were "vague and undefined" and that "Dempsey had no personal knowledge" of Wojeck's solicitation on working time. The record shows, however, that one of Dempsey's own employees, John Bowles, complained to Dempsey that Wojeck solicited Bowles while Bowles was welding. We correct this oversight by the Trial Examiner, but note that it does not detract from the Trial Examiner's findings that: (1)

Wojeck had worked for the Respondent for 11 years; (2) the Respondent had never complained about his work performance; and (3) Dempsey had not attempted to obtain Wojeck's side of the story or even to advise Wojeck as to the specific nature of the complaints against him. Further, the record shows that the Respondent had in the past permitted solicitations on company time. Thus, Lions Club members, including Dempsey, sold brooms throughout the plant on working time, a tool salesman set up a display inside the plant and sold the employees tools during their working hours, and money was solicited for Boy Scout cookies, needles for the band-raising fund, and chocolate bars for children graduating from school, all without objection by the Respondent. Accordingly, we agree that the assigned reason for Wojeck's discharge—that he interfered with the work of other employees—was a pretext, and that the real reason was his union activity.

On Page 31, lines 21-27, the Trial Examiner related a conversation involving James Hill and supervisor Trotter. According to the Trial Examiner, Hill was asked by Trotter if he was a union man, and Hill replied that he was, whereupon Trotter is quoted by the Trial Examiner as saying, "You know you'll get fired for that." The record shows, however, that the query as to Hill's union affiliation and the statement about being fired were actually made by a nonsupervisory employee, Eskew, although in the presence of Trotter. We correct this error but note that it does not detract from the Trial Examiner's findings, with which we agree, that the Respondent mounted a campaign to get rid of Hill as soon as his name appeared

on a Union leaflet, and finally discharged Hill on unsupportable grounds. Accordingly, we agree with the Trial Examiner that Hill was discharged in violation of Section 8(a)(3) of the Act.

The complaint herein alleged that from November 22, 1963, and continuing until September 14, 1964, the Respondent reduced the hours of work of James Hill, in violation of Section 8(a)(3) of the Act. The Trial Examiner did not discuss this aspect of the case or make findings thereon. The General Counsel's exceptions contend that for the period in question Hill was given 1 hour less overtime per week than all other employees in his department, and was additionally deprived of work on double shifts which he had done prior to November 22, 1963.

The record shows that in about September 1963, shortly after Hill joined the Union and distributed a Union leaflet with his name on it, Hill's department went on a 6-day, 48-hour week, a change from the normal 5-day, 40-hour week. The 6-day week continued until the time Hill was discharged on September 14, 1964.

About the middle of October 1963, the above-described conversation between Hill, Eskew, and Trotter took place, during which Hill admitted that he was a Union member. Hill testified that the week after this conversation he began to lose overtime. Data submitted by the Respondent corroborate Hill's claim. Thus, in the period November 18, 1963, to September 14, 1964, Hill worked 310.5 hours of overtime, which amounts to an average of 7 hours per week during that 44-week period. In contrast, all other

regular employees in Hill's department averaged 8 hours overtime per week. The Respondent offered no explanation for this discrepancy.

Hill also testified that prior to his conversation with Eskew and Trotter, the Respondent had frequently designated Hill and Dockery, another employee, to work a double shift.[14] That is, these two employees would stay on after the conclusion of the second shift, on which they regularly worked, and would work the third shift from midnight until between 7 a.m. and 8 a.m. for which they received time-and-a-half pay.

After Hill told Trotter in mid-October 1963 that he was a Union member, Hill received no double shift work, although Dockery continued to get this assignment. On one occasion, according to Hill, Dockery complained to Hill that the Respondent "was working him [Dockery] too much" and asked Hill if he would work the overtime that night in Dockery's place. Hill agreed and suggested that Dockery speak to Johnson, their second hand. Nevertheless, on this occasion Hill was not assigned the double shift. Hill also stated that he had directly requested his supervisors to assign him overtime work, but to no avail. In these circumstances, we find that Hill was denied overtime work because of his union affiliation and activity, in violation of Section 8(a)(3) of the Act, and shall order

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[14]This is substantiated by a document submitted by the Respondent which shows that for the period from January 20, 1963, through November 17, 1963, during almost all of which the Respondent was on a 5-day week, Hill earned an average of 6.3 hours of overtime per week.

that he be made whole for any loss of earnings suffered as a result of the discrimination against him.

In discussing the discharge of Willis Young, the Trial Examiner did not mention that Young had given testimony under the Act, although in his "Conclusions of Law" he lists Young's discharge as a violation of Section 8(a)(4). We note that Young testified as a witness for the General Counsel at the first hearing on June 24, 1964, and, accordingly, make this addition to the Trial Examiner's findings. We agree with the Trial Examiner that Young was discharged in violation of Section 8(a)(3) and (4) of the Act.

The Trial Examiner attributed to Willie Pulley, who directed the work of John Little and Leslie Hancock, certain damaging admissions and threats. The Respondent contends that Willie Pulley is not a supervisor. The record shows, however, that Pulley is the only person directing the work of the 8-10 employees in the cloth room for most of his shift and that Pulley gives employees time off for illness. Accordingly; we find Willie Pulley to be a supervisor within the meaning of Section 2(11) of the Act.

The Remedy

In *J. P. Stevens I,* decided last year, we found that "the conventional reinstatement, backpay, and posting of notice requirements for 8(a)(3) and (1) violations are not completely adequate to undo the effect of the massive and deliberate unfair labor practices committed by Respondent in its successful efforts to frustrate organization by its employees." Accordingly, we ordered the Respondent, in ad-

dition to our usual remedies, to: (1) convene during working time meetings of employees in the various departments of its North and South Carolina plants and read to them a copy of the Notice to All Employees; (2) mail copies of the notice, after it has been signed by the Respondent's representative, to each of its employees in its plants in the States of North and South Carolina; and (3) give to the Union and its representatives, upon request, reasonable access to its bulletin boards and other places where notices to employees are customarily posted for a period of 1 year beginning with the issuance date of that Decision.

The Charging Party has requested that, in addition to the above three remedies, we also require the Respondent to furnish the Union with a list of names and addresses of its employees. We have decided to give all four remedies and now proceed to explicate more fully our reasons therefor.

The Trial Examiner here observed that:

> The record of the 1965 hearing [the instant case] reflects the continued, systematic determination of this employer as revealed by the record of the 1964 hearing [*J. P. Stevens I*], to destroy the union root and branch by discharging its most active members on any pretext which might come to hand, or could be invented, by threatening to discharge others unless they came to management and renounced the Union, and by provoking the resignation of still others from Respondent's employment. No other conclusion can be drawn than that Respondent has largely succeeded in its purpose.

The total of unfair labor practices committed by the Respondent in this case and in *J. P. Stevens I,* involving more than 20 of the Respondent's plants, supports the Trial Examiner's observation. In these cases the Respondent unlawfully discharged a total of 88 employees for their union activity and discriminated against 4 employees because of their Union affiliation by not assigning overtime to them, in violation of Section 8(a)(3) of the Act. In addition, the Respondent violated Section 8(a)(4) of the Act by discharging seven employees for participating in National Labor Relations Board proceedings. The Respondent also otherwise interefered with, coerced, and restrained its employees in the exercise of their right to self-organization and to engage in concerted activities, a right guaranteed by Section 7 of the Act. It did so in these two cases by making at least 30 threats of reprisal and promises of benefit to employees, by engaging in four acts of surveillance and in two instances creating the impression of surveillance of union activities, by demanding on two occasions that employees remove union insignia, by posting threatening notices on its bulletin boards, and by discriminating against uinon adherents in the application of a no-solicitation rule.[15] The record before us of exten-

[15]Our records of past cases involving this Respondent show that the above cases do not represent isolated instances where the Respondent violated the Act, but are rather two more in a series of cases which reflect the Respondent's general policy of chilling unionism by committing unfair labor practices or engaging in objectionable conduct. Thus, in *Industrial Cotton Mills (Division of J. P. Stevens Co.),* 102 NLRB 1265, the Board, in 1953, found that the Respondent had violated Section 8(a)(3) and (1) of the Act when it denied reinstatement to two strikers who were union

sive unfair labor practices and the history of illegal conduct by the Respondent persuade us that conventional remedies would not be adequate to disabuse the employees of the effects of the Respondent's flagrant conduct and to bring home to the Respondent's employees the message that the Respondent is being required to cease and desist from interfering with their rights guaranteed by Section 7

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members. This decision was affirmed, in part, by the Fourth Circuit Court of Appeals in *NLRB* v. *Industrial Cotton Mills (Division of J. P. Stevens Co.)*, 208 F. 2d 87 (C.A. 4). In 1955, in *Delta Finishing Company (Division of J. P. Stevens & Co., Inc.—Plant No. 3)*, 111 NLRB 659, the Board held that the Respondent had violated Section 8(a)(1) of the Act by interrogating and threatening employees about their union activity and by promulgating an illegal no-solicitation rule. The Respondent was found by the Board to have violated Section 8(a)(3) and (1) of the Act again in 1959 in *J. P. Stevens & Co., Inc.*, 125 NLRB 1354, when its supervisors discharged employees for their union activity, and made threats of firing and plant closings, and predictions of violence in the event of unionization.

During the period of time covered by the instant case, representation elections were held at various plants of the Respondent, where the Respondent continued its course of illegal conduct. In *J. P. Stevens & Co., Inc. (Dunean Plant)*, Case No. 11-RC-2136 (not published in NLRB volumes), an election which the Union lost was set aside because the Respondent's supervisors had unlawfully interrogated and threatened employees, had ordered an employee to write "Vote No" on about 20-25 cards and distribute them to employees on working time, and had permitted antiunion employees to distribute literature on working time while publishing a no-solicitation rule prohibiting similar union employee solicitation. A representation election at 6 of the Respondent's plants in *J. P. Stevens & Co., Inc.*, 11-RC-2095 (not published in NLRB volumes), was also set aside because prior to the election the Respondent had made thinly veiled threats to employees of plant closing and discharge in the event of unionization.

of the Act, to join or not to join a union. Remedies other than the conventional ones are clearly called for here.

We note that the Supreme Court has recognized that Congress conferred upon the Board broad discretion to create remedies to meet specific situations where the normal modes of relief will not suffice to right the outstanding wrong. In the leading case of *Phelps Dodge Corporation* v. *N.L.R.B.*, 313 US 177, 194, Mr. Justice Frankfurter indicated the Court's view of the Board's powers in this area:

> . . . [I]n the nature of things Congress could not catalogue all the devices and stratagems for circumventing the policies of the Act. Nor could it define the whole gamut of remedies to effectuate these policies in an infinite variety of specific situations. Congress met these difficulties by leaving the adaptation of means to end to the empiric process of administration. The exercise of the process was committed to the Board, subject to limited judicial review.[16]

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[16]See, also, *May Department Stores* v. *N.L.R.B.*, 326 U.S. 376, 391-92, where the Court recognized that "the Board has the same power to determine the needed scope of cease and desist orders under the National Labor Relations Act that courts have, when authorized to issue injunctions, in other litigation." Accord: *N.L.R.B.* v. *Seven-Up Bottling Co.*, 344 U.S. 344; *IAM Tool and Die Makers Lodge No. 35* v. *N.L.R.B.*, 311 U.S. 72; *N.L.R.B.* v. *Globe Products Corp.*, 322 F. 2d 1459 (C.A. 4); *Standard Generator Service Company of Missouri, Inc.* v. *N.L.R.B.*, 186 F. 2d 606 (C.A. 8); *N.L.R.B.* v. *Idaho Egg Producers, Inc.*, 229 F. 2d 821 (C.A. 9); *Eichleay Corp.* v. *N.L.R.B.*, 206 F. 2d 799 (C.A. 3). And, see House Rep. No. 969 on H.R. 7978 (74th Cong., 1st Sess.) p. 21, 2 Legis. Hist. of the National Labor Relations Act of 1935 (Govt. Prtg. Off.) 2931. See, also, House Rep. No. 1147 on S. 1958 (74th Cong., 1st Sess.) pp. 23-24, 2 Legis. Hist. of the National Labor Relations Act of 1935 (Govt. Prtg. Off.) 3074.

Mindful of the proscription against remedies which may unduly penalize a respondent[17] as well as of the necessity of being imaginative and meticulous in fashioning our orders,[18] we have herein prescribed only such remedies as are warranted by the record before us. This record and that of earlier cases is replete with examples of unlawful attempts by the Respondent's supervisors to wean individual employees away from the Union or to prevent them from joining it. These illegal attempts involved interrogations, promises, and threats that were most often followed by unlawful discharges of Union members, carried out by these same supervisors, which reached massive proportions.

This individual, face-to-face approach by the Respondent's supervisors towards its employees we find to have a greater psychological impact upon the employees than similar remarks made by an employer in a letter to all employees or in a speech to a large assembly of workers.[19] We find, therefore, that the posting of a notice, which is our usual remedy, is insufficient to dissipate the effects of the Respondent's unfair labor practices. In this case it is

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[17]Cf. *Virginia Electric and Power Company* v. *N.L.R.B.*, 319 U.S. 533.

[18]See, Flannery, Dennis M., "The Need for Creative Orders Under Section 10(c) of the National Labor Relations Act," 112 U. Pa. L. Rev. 69, 79 (1963). See, also, Note, 59 Harv. L. Rev. 747, 765.

[19]Baker, Ballantine, & True, *Transmitting Information Through Management and Union Channels* (1949) p. 125; Peters, R. W., *Communication Within Industry* (1950) p. 178; Note, 61 Yale L. J. 1066, 1074-1076, footnotes 33-39 (1952).

essential that each employee be made individually aware of his statutory rights.[20] Accordingly, we have ordered the Respondent's supervisors, many of whom were directly implicated in the unfair labor practices described above, to read the attached "Notice To All Employees" to the employees in their departments, thereby directly placing the imprimatur of recognizable supervisory authority on the notice. We have also ordered that the Respondent mail copies of the "Notice To All Employees" to its employees to ensure that employees who are sick, on vacation, or otherwise absent when the notice is read will have an opportunity to be adequately informed of the Respondent's intention to refrain from engaging in unfair labor practices. The mailing of the notice to everyone will also permit those who heard the lengthy notice read in the plant to peruse it at their leisure and fully absorb it.[21]

The record also shows that the Respondent carried on a long campaign of illegal intimidation and unlawful discharge of those employees who were actively soliciting for the Union. The Respondent's efforts to eliminate those Union members who might recruit others to the Union banner were, as the Trial Examiner herein indicated, largely successful: in some departments where there once had been a number of Union supporters, not one was left. They had been discharged, or withdrew from the Union

[20]The Supreme Court early recognized that, "the employer may be required . . . to give appropriate notice of his compliance with the Board's order. . . ." *Republic Steel Corp.* v. *N.L.R.B.*, 311 U.S. 7, 12.

[21]*H. W. Elson Bottling Company*, 155 NLRB 714.

because of fear of reprisals. Meanwhile, antiunion employees were free to talk about the Union during working hours.

In these circumstances, we believe that a simple cease and desist order will not suffice, for it would be unrealistic to believe that such an order could retrieve the employees' thwarted rights of self-organization or restore the Union to its previous position where it was able to make known its views and solicit memberships with the help of employee members within the plant. Few, if any, Union supporters are left, and those who might espouse the Union cause, such as reinstated employees who previously had been discharged for their union activity, would probably be afraid to promote the Union for fear that they would be discharged again. The atmosphere of fear generated by the illegal threats, interrogations, and discharges in the plant undoubtedly will hinder lawful propaganda activities during nonworking time on company premises. We note, furthermore, that union organizers ordinarily have no right of access to the plant[22] and that, so far as the record shows, this Union now has no other effective means of personally contacting all of the Respondent's employees. Accordingly, we have decided to grant the Charging Party's request that the Respondent be required to supply the Union, upon request made within 1 year, with the names and addresses of all employees in its North and South Carolina plants. This will enable the Union to contact all employees outside the plant and make known its views in an atmosphere relatively free of restraint and

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[22] *N.L.R.B.* v. *Babcock & Wilcox,* 351 U.S. 105.

coercion. As the Respondent was responsible for the unfair labor practices in the plants and for the attendant lack of organizational opportunities, and as all the employees' names and addresses are not available from sources other than the Respondent, we think it reasonable to require it to furnish the list.[23]

In *J. P. Stevens I*, we found that the Respondent had violated Section 8(a)(1) of the Act by posting on its bulletin boards a notice which informed employees that if "the union were to get in here it would not work to your benefit but, in the long run would itself operate to your serious harm." These bulletin boards were also used to post lists of employees who, the Respondent had been informed, had joined the Union. Some of these employees told the Respondent they desired to leave the Union, whereupon their names were "scratched" from the list on the bulletin boards. This, the Trial Examiner found, revealed "to all how the fortunes of the Union ebbed and flowed." In view of this extensive use by the Respondent

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[23]See, *H. W. Elson Bottling Company, supra; S & H Grossinger's Inc.*, 156 NLRB 233, enfd. in relevant part F. 2d (C.A. 2, Feb. 1, 1967); *Scott's, Inc.*, 159 NLRB No. 146; *James A. Pearson, Rufus S. Pearson and Mrs. E. W. Pearson d/b/a Crystal Lake Broom Works*, 159 NLRB No. 30. This requirement of a list of names and addresses supplied by the employer and furnished to the union is now standard procedure in those cases where an NLRB representation election has been scheduled. Cf. *Excelsior Underwear Inc. and Saluda Knitting Inc.*, 156 NLRB 1236. Preliminary studies by the Board in the representation case area have shown that the compilation of such a list does not place an undue burden upon an employer, that in almost all cases employers have readily supplied the list, and that this procedure has generally worked to the satisfaction of the parties.

of its bulletin boards, and particularly in consideration of the Respondent's flagrant unfair labor practices which denied and deprived its employees of their rights under the Act, we are also requiring the Respondent to give the Union and its representatives reasonable access to the Respondent's bulletin boards for a period of 1 year.

Because of the widespread and flagrant nature of the Respondent's unfair labor practices, which have occurred in the more than 20 plants involved in the present and prior proceedings (see footnote 15, above), we believe it necessary to make the above remedies applicable to all the Respondent's plants in North and South Carolina. This requirement will help insure that all the Respondent's employees will be informed of the Respondent's intention to refrain from coercing them in the exercise of their protected rights.

In its brief, the Charging Party urges that in cases such as this, where, because of the Respondent's massive unfair labor practices, the Union has been prevented from obtaining a majority, the Board should issue an order directing the Company to recognize and bargain with the Union. The Charging Party would make such an order applicable to the Slater Plant and the Roanoke Rapids plants herein. We are not persuaded, however, that such an order is appropriate. Although there is a possibility that, but for the Respondent's unfair labor practices, the Union might ultimately have secured majority status, it has not done so. In view of the majority principle in Section 9(a) of the Act, we have serious doubts that the policies of the Act

require or permit the issuance of a bargaining order where majority status has never been attained.[24]

Conclusions of Law

1. Textile Workers Union of America, AFL-CIO, is a labor organization within the meaning of Section 2(5) of the Act.

2. Respondent is engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

3. By discriminating in regard to the hire or tenure of employment or any term or condition of employment of those employees whose names appear in the Appendix attached hereto, thereby discouraging membership in the above-named Union, the Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(3) of the Act.

4. By discharging employees because they gave testimony under the Act, Respondent violated Section 8(a)(4) of the Act.

5. By engaging in interference, restraint, and coercion, the Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(1) of the Act.

6. Respondent did not violate the Act by discriminating with respect to the hire and tenure of employment of Wylie Hill, Bobby Spoon, Franklin Moore, Joe Manley, Daniel Murray, and William Coker.

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[24] *H. W. Elson Bottling Company, supra; J. P. Stevens and Co., Inc.*, 157 NLRB No. 90.

7. The aforesaid unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the Respondent, J. P. Stevens and Co., Inc., Rock Hill and Greenville, South Carolina, and Roanoke Rapids, North Carolina, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Discharging, forcing the termination of, refusing overtime work to, or otherwise discriminating against employees in regard to hire or tenure of employment or any term or condition of employment in order to discourage membership in Textile Workers Union of America, AFL-CIO, or any other labor organization.

(b) Discharging or otherwise discriminating against employees for giving testimony under the Act.

(c) Engaging in surveillance of employees' activity in respect to union organization or giving the impression thereof.[25]

(d) Interrogating any employee concerning such union activity by him or other employees in a manner constituting a violation of Section 8(a)(1) of the Act.

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[25]The Trial Examiner inadvertently left these paragraphs out of his proposed "Notice To All Employees". We have corrected this omission.

(e) Threatening its employees with discharge or other reprisals if they become or remain members of the Union or give any assistance or support to it.

(f) Altering its working conditions for the purpose of defeating the organizational efforts of its employees or of Textile Workers Union of America, AFL-CIO, or the efforts of any other labor organization of its employees.

(g) Encouraging or permitting employees to engage in antiunion activity while prohibiting employees from engaging in activity on behalf of the Union.

(h) Intimidating, coercing, encouraging, and assisting employees in withdrawing from the Union.

(i) Instructing employees to watch for and report to the Respondent the union activities of other employees.

(j) Requiring its employees to remove and prohibiting its employees from wearing Union insignia.[26]

(k) In any other manner interfering with, restraining, or coercing its employees in the exercise of their right to self-organization, to form, join, or assist Textile Workers Union of America, AFL-CIO, or any other labor organization, to bargain collectively through represenatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or mutual aid or protection, and to refrain from any or all such activities.

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[26]See footnote 25, *supra.*

2. Take the following affirmative action which the Board finds will effectuate the purposes of the Act:

(a) Offer to the employees, whose names appear in the Appendix attached hereto, reinstatement to their former positions or to substantially equivalent positions, without prejudice to their seniority and other rights and privileges previously enjoyed; and make each such employee whole for any loss of pay he may have suffered by reason of the Respondent's discrimination against him, in the manner described in "The Remedy" section of the Trial Examiner's Decision.

(b) Offer to James Rosemond and James Hill overtime work in accordance with the practice of offering these said employees overtime work prior to the date overtime work was first discriminatorily withheld from each of them, and make them whole for loss of overtime pay during the period of time overtime work was discriminatorily withheld from each of them, with interest at 6 percent per annum.

(c) Notify those employees listed in the Appendix attached hereto, if presently serving in the Armed Forces of the United States, of their right to full reinstatement, upon application, in accordance with the Selective Service Act and the Universal Military Training and Service Act, as amended, after discharge from the Armed Forces.

(d) Preserve and, upon request, make available to the Board or its agents, for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records neces-

sary to analyze the amounts of backpay due and the rights of employment under the terms of this Order.

(e) Mail a copy of the attached notice marked "Appendix"[27] to each employee, and post copies at all of its plants located in the States of North Carolina and South Carolina. Copies of said notice, to be furnished by the Regional Director for Region 11, shall be signed by a representative of the Company. Thereafter, a copy shall be mailed by the Company to each of its employees working in its North Carolina and South Carolina plants, and additional copies shall be posted by it and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Company to insure that said notices are not altered, defaced, or covered by any other material.

(f) Upon request of the Union, immediately grant the Union and its representatives reasonable access, for a 1-year period beginning with the issuance date of this Decision, to its bulletin boards and all places where notices to employees are customarily posted.

(g) Upon request of the Union, made within 1 year of the issuance date of this Decision, immediately give to the Union a list of the names and addresses of all employees in its plants in North and South Carolina.

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[27]In the event that this Order is enforced by a decree of a United States Court of Appeals, there shall be substituted for the words "a Decision and Order" the words "a Decree of the United States Court of Appeals, Enforcing an Order".

(h) Convene during working time, by departments and by shifts, all its employees, and a responsible official of the Respondent, at Departmental Supervisor level or above, shall read to department employees the contents of the attached Appendix.

(i) Notify the Regional Director for Region 11, in writing, within 10 days from the date of this Order, what steps have been taken to comply herewith.

IT IS HEREBY FURTHER ORDERED that the complaint herein be, and it hereby is, dismissed insofar as it alleges violations of the Act not found herein.

Dated, Washington, D. C., March 6, 1967.

Frank W. McCulloch, Chairman

John H. Fanning, Member

Gerald A. Brown, Member

Howard Jenkins, Jr., Member

Sam Zagoria, Member

NATIONAL LABOR RELATIONS BOARD

(SEAL)

APPENDIX

NOTICE TO ALL EMPLOYEES

PURSUANT TO
A DECISION AND ORDER

of the National Labor Relations Board, and in order to effectuate the purposes of the National Labor Relations Act, as amended, we hereby notify our employees that:

WE WILL NOT discharge, force the termination of, refuse overtime work to, or otherwise discriminate against employees in order to discourage membership in or support of the TEXTILE WORKERS UNION OF AMERICA, AFL-CIO, or any other labor organization.

WE WILL NOT discharge or otherwise discriminate against employees for giving testimony under the Act.

WE WILL NOT engage in surveillance of employees' activities with respect to union organization.

WE WILL NOT interrogate any employee concerning such activity by them or other employees.

WE WILL NOT threaten our employees with discharge or other reprisal if they become or remain members of the Union or give any assistance or support to it.

WE WILL NOT alter our working conditions for the purpose of defeating the organizational effort of our employees or of TEXTILE WORKERS UNION OF AMERICA, AFL-CIO, or the efforts of any other labor organization of our employees.

WE WILL NOT encourage or permit employees to engage in antiunion activity while prohibiting employees from engaging in activity on behalf of the Union.

WE WILL NOT encourage and assist employees in withdrawing from the Union.

WE WILL NOT instruct employees to watch for and report to the Company the union activities of other employees.

WE WILL NOT prohibit employees from wearing Union insignia.

WE WILL NOT intimidate and coerce employees into withdrawing from the Union.

WE WILL NOT in any other manner interfere with, restrain, or coerce our employees in the exercise of their right to self-organization, to form labor organizations, to join or assist the aforesaid Union, or any other labor organization, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and to refrain from any or all such activities.

WE WILL offer to the employees named below immediate and full reinstatement to their former or substantially equivalent positions, without loss of seniority or other rights and privileges, and WE WILL MAKE THEM WHOLE for any pay they lost because of the discrimination against them, with interest.

Ben Suratt	Frank Wojeck
Hubert Varnadore	James Hill
John Fulbright	Leroy Reeves
Oliver Durham	Willis Young
Willard Page	Rufus Finley
Junior Hulsey	Donald Jones
W. O. Epps	John Little
Jake Owens	Leslie Hancock
Arthur Dean	Juanita Faulkenberry

We will offer to James Rosemond and James Hill overtime work in accordance with the practice of offering these said employees overtime work prior to the date overtime work was first discriminatorily withheld from each of them, and make them whole for loss of overtime pay during the period of time overtime work was discriminatorily withheld from each of them, with interest.

All our employees are free to become, remain, or refrain from becoming or remaining, members of TEXTILE WORKERS UNION OF AMERICA, AFL-CIO, or any other labor organization.

J. P. STEVENS AND CO., INC.
(Employer)

Dated..... By.....
(Representative) (Title)

NOTE: We will notify the above-listed employees, if presently serving in the Armed Forces of the United States, of their right to full reinstatement,

upon application, in accordance with the Selective Service Act and the Universal Military Training and Service Act, as amended, after discharge from the Armed Forces.

This notice must remain posted for 60 consecutive days from the date of posting, and must not be altered, defaced, or covered by any other material.

Employees may communicate directly with the Board's Regional Office, 1624 Wachovia Bldg., 301 North Main St., Winston-Salem, North Carolina 27101 (Tel. No. 723-2911, Ext. 371).

SUPREME COURT, U. S.

No. 224

FILED
JUL 23 1968
JOHN F. DAVIS, CLERK

In the Supreme Court of the United States

OCTOBER TERM, 1968

J. P. STEVENS & CO., INC., PETITIONER

v.

NATIONAL LABOR RELATIONS BOARD, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD IN OPPOSITION

ERWIN N. GRISWOLD,
Solicitor General,
Department of Justice,
Washington, D. C., 20530.

ARNOLD ORDMAN,
General Counsel,

DOMINICK L. MANOLI,
Associate General Counsel,

NORTON J. COME,
Assistant General Counsel,

RICHARD B. ROBIN,
Attorney,
National Labor Relations Board,
Washington, D. C., 20570.

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1a-23a) is reported at 388 F. 2d 896. The Board's decision and order (Pet. App. 34a-84a; J.A. 12-163)[1] are reported at 163 NLRB No. 24.

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[1] "J.A." refers to the Joint Appendix in the court below. "Tr." refers to the transcript of testimony in the Board proceeding; "G.C.X." refers to the General Counsel's exhibits; and "R.X." to those of the Company.

JURISDICTION

The decree of the court of appeals was entered March 26, 1968 (Pet. App. 24a-33a). The petition for a writ of certiorari was filed on June 24, 1968. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTIONS PRESENTED

1. Whether substantial evidence supports the Board's findings that the employer violated the National Labor Relations Act by discharging 18 employees because of their union activities or because they had testified adversely to the employer in a prior Board proceeding, and by denying overtime to two other employees for similar reasons.

2. Whether, as a remedy for the extensive unfair labor practices in this case, it was reasonable for the Board to require the employer (a) to post an appropriate notice in all its plants in North and South Carolina and to mail a copy thereof to each employee at these plants, (b) to read or permit the notice to be read to the employees at those plants where the unfair labor practices were actually committed, and (c) to grant the union, upon its request, reasonable access to the employer's bulletin boards for a period of one year.

STATUTE INVOLVED

The relevant provisions of the National Labor Relations Act, as amended (61 Stat. 136, 73 Stat. 519, 29 U.S.C. 151 *et seq.*) are set forth in the Appendix, *infra*, pp. 25-26.

STATEMENT

A. The Board's Findings of Fact

1. *Background: The Company's unfair labor practice campaign; the first Stevens case*

In May 1963, the Union[2] undertook a concerted organizing campaign in approximately half of the Company's 43 textile plants in North and South Carolina. In *J. P. Stevens & Co., Inc.*, 157 NLRB 869 (hereafter "*Stevens I*"), enforced with minor modifications, 380 F. 2d 292 (C.A. 2), certiorari denied, 389 U.S. 1005, the Board found that the Company countered by committing "massive and deliberate unfair labor practices" (157 NLRB at 878). Thus, the Company repeatedly violated Section 8(a)(1) of the Act by threats of reprisals, promises of benefit, coercive interrogation, surveillance, and other unlawful interference (*id.* at 870-871; 380 F. 2d 296, 301). In addition, it discharged 71 employees and deprived two others of overtime work, as a reprisal for their union and protected activity, in violation of Section 8(a)(3), (4) and (1) of the Act (157 NLRB at 872-877, 887-958; 380 F. 2d at 301). Upon reviewing the Board's findings in *Stevens I*, the Second Circuit held that there was ample support for the Board's ultimate conclusion that (380 F. 2d at 301, quoting from 157 NLRB at 965-966):

> [The Company], through its plant superintendents, acting in collaboration, initiated and pursued a pattern of conduct the purpose of which

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[2] Textile Workers Union of America, AFL-CIO.

was to crush the union movement. With scant regard for the means employed other than their effectiveness, it interfered with, restrained and coerced its employees in the exercise of their rights under the Act, flagrantly, cynically, and unlawfully.

2. ***The instant case: The Company's continued illegal activity***

During the course of the proceedings in *Stevens I*, March to September 1964, the Company continued to discharge employees, and further unfair labor practice charges were filed (J.A. 64). Some of these charges, together with additional charges alleging further discharges and other acts of restraint and coercion in the period September 1964 through May 1965, form the basis for the complaint in the present case (J.A. 64).

Thus, during the pertinent period the Company, *inter alia*, discharged 18 employees and deprived two employees of overtime work. The Board found that this action was taken because these employees had actively supported the Union or had testified adversely to the Company in *Stevens I*. As in the Board's brief in opposition in *Stevens I*, No. 684, 1967 Term, we will not at this stage of the proceedings undertake to detail all of the evidence submitted at the lengthy Board hearings that supports the Board's findings as to each of the employees involved.[3] Instead, a summary of the evidence concerning certain of these employees, illustrating the manner in which the Com-

[3] The evidentiary findings relating to each of these employees are set out at J.A. 16-40, 63-148.

pany dealt with those who chose to support the Union or testify against the Company, would seem sufficient to demonstrate why plenary review of the substantiality of the evidence is not warranted in the instant case.

a. Republic plant No. 3. *Ben Suratt*, a warp service hand in the weave room, joined the Union in August 1963, at which time the Company posted his name on the department bulletin board (J.A. 66; Tr. 79; 157 NLRB at 895, 896).[4] On August 24, the day following the discriminatory discharge of employee Walden, Suratt, together with employees Hyatt and Price, who also worked on Walden's shift and whose names also had been posted, went to the office of Superintendent Melvin Smith (J.A. 66; 157 NLRB at 896). The three employees told Smith and Leland Burns, assistant manager of all Rock Hill area plants, that they wanted to get out of the Union and would like their names removed from the posted list (J.A. 66; 157 NLRB at 896). Burns and Smith proceeded, in violation of Section 8(a)(1), to ask about the union membership of other employees, to comment adversely on the union activities of still others including the discharged Walden (characterized as a "damned ringleader"), and to suggest that joining the Union could lead to losing one's job. Burns told the three men that they could help themselves by getting out of the Union, and said that, while he was not going to

[4] It was the Company's practice to post on its bulletin boards the names of the employees who had joined the Union. As employees withdrew from the Union, their names were crossed off the lists (Pet. App. 3a).

require them "to sign anything," they would have to "prove" themselves and watch the company they kept. Burns added that he could not promise them anything, and that, if they ever decided to get back in the Union, they were to "come to me and let me know first" (J.A. 68; 157 NLRB at 896-897).

On March 25, 1964, Suratt, Hyatt, and Price testified to the above incident at the hearing in *Stevens I* (J.A. 66-67). Thereafter, Carter, their general overseer, "went to watching [the three men] pretty close" (Tr. 80, 299). Moreover, at this time, Suratt's and Hyatt's enthusiasm for the Union rekindled, and they began wearing union buttons and T-shirts at work (J.A. 68; Tr. 84-85).

On July 22, Suratt and Hyatt, who worked together as a team, were making a repair on a warp together with Plyler, another service man, when the latter two were taken off the job and assigned to other work (J.A. 68; Tr. 79, 374-375, 86-91, 150-154, 400). Left to make the repair by himself, though he was the least experienced of the three, Suratt took about two hours to do the job (J.A. 68; Tr. 88-89, 154, 346). The next day, Carter, advised by Suratt's immediate supervisor that this was too long, signed a personnel action report on Suratt (J.A. 32, n. 12, 68; R.X. 12, Tr. 385, 158-160). Two nights later, Suratt made another repair that took about two hours (J.A. 68; Tr. 92-93, 147, 376). As he worked, Supervisors Brannon and Dixon stood nearby "laughing and looking at Suratt" (Tr. 92). On completing the job, Suratt went on to other work (J.A. 68; Tr. 380). However, Brannon went to the loom, cut the piece of cloth

out in order to count the thread ends, and allegedly thus "found out for sure" that Suratt had taken too long to make the repair (J.A. 68-69; Tr. 383-384). Brannon reported his conclusion to Dixon, who adopted his recommendation that Suratt be fired (J.A. 69; Tr. 381, 383, 395-396).

While Brannon claimed that two hours was excessive for the repair that assertedly precipitated Suratt's discharge, he was contradicted by employees Hubert Varnadore and Elbert Lyles. Both of these men had experience as service hands, both observed the break-out, and both estimated that an experienced service man would take between two and three hours to make the repair (Tr. 410-417). Brannon could not recall any previous occasion when he had cut off cloth to ascertain whether an employee had taken too long at a repair (J.A. 69; Tr. 384), nor does it appear that any employee had ever before been dismissed for this reason. Suratt's replacement, Supervisor Dixon's son, was a learner or trainee (Tr. 145-146).[5]

Hubert Varnadore, a weaver, had received no written reprimands or write-ups during his ten years with the Company prior to his announced affiliation with the Union (J.A. 72; 103-105). On August 29, 1963, two weeks after his Union membership was posted, he received a write-up for "mixing filling"; another one for the same thing on March 30, 1964, while he was under subpoena as a witness in *Stevens I* and the day before he testified; a third for running a "wrong

[5] Hyatt voluntarily quit the Company's employ a week or two after Suratt's discharge (J.A. 67; Tr. 94).

colored end," on April 16, 1964; and a fourth for "poor inspecting," on November 11, 1964 (J.A. 72-73; Tr. 331-333, 362-364, 157 NLRB at 904, R.X. 3-6). Moreover, during July 1964, Varnadore, along with Suratt and a few others (*supra*, p. 6), began wearing union buttons and T-shirts in the plant (J.A. 73; Tr. 111, 84-85). One night Overseer Carter told Varnadore that he would "have to go home and take the shirt off" (J.A. 73; Tr. 112). Carter's only explanation, offered at the Board hearing, was that the T-shirt would "attract attention" (J.A. 73; Tr. 302-303).

When Varnadore reported to work at midnight on March 16, 1965, Supervisor Brannon took him to Overseer Carter's office to see a roll of cloth containing a running defect, and then sent him home with instructions to see Carter in the morning (J.A. 73-74, 13, n. 2; Tr. 116-119, 362-364, 308). The next morning, Carter discharged Varnadore (J.A. 72, 13, n. 2; Tr. 121-125, 308-309). Carter's explanation for this action—that Varnadore was responsible for the flawed cloth—was discredited by the Trial Examiner (J.A. 75-177). The Examiner was "not persuaded that the cloth * * * in fact came from one of Varnadore's looms" (J.A. 75-76, 73-74; Tr. 307-308, 315-317). Neither Varnadore nor Brannon was shown the cloth before it was removed from the loom (J.A. 75; Tr. 307-308, 320-321, 352-353). The weaver who (according to Carter) discovered the defect while the cloth was on the loom was not called to testify, nor was Carter's assistant, who assertedly called the matter to Carter's attention (J.A. 75; Tr. 306-308, 316-317). On the other hand,

Varnadore testified that he did not know from whose loom the cloth had come, and that he did not see his name on it, although the weaver is required to write his name on his cloth (J.A. 75, 76, n. 18; Tr. 127-130). Carter could not recall any weaver whom he had previously discharged (J.A. 77; Tr. 323), and, although admitting that the loom fixer is responsible along with the weaver for the defect attributed to Varnadore, testified that Varnadore's fixer, Greene, was not discharged nor even given a write-up (J.A. 74-75, 76; Tr. 316, 318-319).[6]

b. The Dunean plant. *Oliver Durham* was a cloth doffer in the Dunean weave room (J.A. 84; Tr. 921). In August and September 1964, his name, having appeared on union leaflets as a member of the organizing committee, was posted by the Company on the bulletin board (J.A. 84; Tr. 921, 922, 949, 1545). After the Union distributed a leaflet at the plant gate on September 9, Durham's supervisor, Cheek, took him to the bulletin board where the Company had posted a copy of the letter that Superintendent Pride had sent to members of the organizing committee (J.A. 85; Tr. 927, 922-923, 1540-1542, G.C.X. 5). The letter stated that the Company had learned from a union leaflet that the addressee was a member of the organizing committee at Dunean; that union activity "must not take place here in the plant on working

[6] In *Stevens I*, the Board found that Carter had attempted to induce a lower-level supervisor to falsify events with respect to the discriminatory discharge of employee Walden, to entrap discriminatee Jarvis Capps into misconduct, and to "frame" discriminatee William Varnadore for a dereliction he had not committed (157 NLRB at 896, 901-902, 899-900).

time"; and that the addressee would be subject to the "requirement" that "anybody who engaged in union organizing effort at this plant and who thereby neglects his work or interferes with the work of others will be subject to discharge from our employment" (J.A. 85-86; G.C.X. 5). Cheek asked whether Durham had received a like letter, told him to read it, and added that "from now on" he would "have to stay on [his] job, not be going to the water house, and not be talking to anyone on the job" (Tr. 923).

On the morning of September 10, late in the shift and after making sure that his work was "caught up real good," Durham went to the washroom to take a break (J.A. 87, 88; Tr. 927-928). This was not the men's washroom just off the weave room floor, but a washroom in the entrance to the warehouse, a three to five-minute walk away, which the Company had assigned to Durham and John Cobb, his fellow doffer, the two Negroes on the shift (J.A. 86; Tr. 928-929, 1533, 1546-1548). On arrival, Durham found Cobb, who had been there for 15 to 20 minutes (J.A. 87; Tr. 965-966, 929-930). Durham had no more than lit a cigarette when Supervisor Cheek appeared (J.A. 87; Tr. 928, 929, 966, 1560). Cheek asked Durham where he had been, and Durham replied that he had gone directly from the weave room to the washroom and had only just arrived (J.A. 87; Tr. 930, 958, 1538). Cobb and Durham told Cheek that Cobb had been there longer (J.A. 87; Tr. 1538, 1561). Cheek replied that Cobb's cloth was on the floor, and ordered him to get back to it (J.A. 87; Tr. 1561). However, he gave no similar instruction to Durham; instead, according to Cheek's own testimony, he left Durham in the

washroom to finish the cigarette Durham had just lit (J.A. 87-88; Tr. 1562). When Durham returned to his job, his work was still caught up; thus, until he was again needed on his own looms, he helped Cobb doff (J.A. 88; Tr. 903, 967-968).

During Durham's next shift, on the morning of September 11, Cheek showed him a personnel action report dated the preceeding day. It recommended that Durham be discharged for "staying in water house too long" (J.A. 13, n. 2; Tr. 932-933, 936, G.C.X. 7). This was the first write-up that Cheek had ever given Durham (Tr. 1545).[7] The following night, when Durham reported to work, Cheek discharged him, giving as the reason "leaving the job unattended too long" (J.A. 88; Tr. 933-933a). Cobb, who had been in the washroom longer than Durham and whose work was in need of attention, but was not a union adherent, was not given a write-up (J.A. 88, 92; Tr. 1563). Rather, Cheek told Cobb that he was "not going to press charges" and that Cobb should not "stay in the water house * * * over fifteen minutes" (J.A. 88; Tr. 968-969).

c. The Slater plant. On August 31, 1964, the Union distributed leaflets at the Slater plant gate discussing the economic benefits it hoped to bring, stating that managerial interrogation was unlawful and any such action should be brought to the attention of the leaflet signers who would then file charges with

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[7] Durham's only previous write-up was from another supervisor, shortly after Durham's name first appeared on a union leaflet (J.A. 84; Tr. 923-924, 936, 1507). It was for a completely unrelated matter, incorrect doffing of a roll of cloth (J.A. 84-85; G.C.X. 6).

the Board (J.A. 115; G.C.X. 21). The leaflet bore the names of 19 persons, 10 of whom, the Board found in *Stevens I*, had previously been unlawfully dismissed from their employment (J.A. 115-116; G.C.X. 21, 157 NLRB at 924-934, 875-876). Within little over a month of the leaflet's circulation, four more signers were fired, Hill, Wojeck, Reeves, and Willis Young. The facts with respect to Hill are as follows:

James Hill worked in the finishing department on the second shift (J.A. 120; Tr. 2207-2208). He joined the Union early in its activities at Slater, and took part in the organizing campaign during September 1963 (J.A. 120; Tr. 2208). About the middle of October of that year, while Hill was working a double shift, he came upon Overseer Trotter and employee Eskew "sitting on a table" (J.A. 39, 120; Tr. 2208-2210). Eskew said to Hill, "you're a union man, aren't you?" (J.A. 38, 120-121; Tr. 2210). When Hill replied that he was, Eskew asserted, "you know you'll get fired for that" (J.A. 38; 121; Tr. 2210). Hill, looking at Overseer Trotter, queried, "you're not going to fire a good man for just joining the Union, are you?" (J.A. 121; Tr. 2210). Trotter "hung his head down and kind of smiled," and said, "No" (*ibid.*). After this conversation, the Company deprived Hill of overtime given to his fellow employees, and also other overtime work that he had previously received (J.A. 38-40).

As noted *supra*, on August 31, 1964, Hill participated in the plant gate distribution of the union leaflet which bore his name as a member of the organizing committee (J.A. 121; Tr. 2222). There-

after, he was watched more closely by his immediate supervisor, Elrod, and his general overseer, Brinkley, both while working and during break periods (J.A. 121; Tr. 2222-2223). On September 2, Elrod entered the smoking area, and saw Hill sitting beside another employee (J.A. 121; Tr. 2713-2714). Saying nothing to the other employee, Elrod told Hill that only one person was supposed to be in the area at a time (J.A. 121; Tr. 2713). Hill got up and went back to his job (*ibid.*). A day or so later, Elrod came upon Hill in the same place talking with an anti-union employee, Cook (J.A. 121; Tr. 2712, 2173). When Elrod appeared, Hill left (*ibid.*). According to Elrod, Cook "a little later" told him that, if Hill "didn't quit bothering him * * * about the Union," he, Cook, "was going to drive him under that machine" (J.A. 121; Tr. 2713). Elrod immediately went to his superior, Brinkley, who said he would "take care of it" (J.A. 121; Tr. 2713-2714). On September 4, after talking with Cook and two other employees, Brinkley gave Hill a write-up for "bothering [employees] on the job and interfering with their work" (J.A. 122; Tr. 2635-2636, 2193, 2199-2200, 2193-2195, 2686-2687, 2200-2202, 2225). The write-up also notified Hill that "any further complaints of this nature [and] you will be subject to discharge" (*ibid.*). Hill denied that he had bothered anyone on the job and asked who had complained, but Brinkley refused to tell him (J.A. 123; Tr. 2225-2226, 2680-2681). Brinkley asked Hill, "why don't you quit," to which Hill answered that he would "continue to pass out leaflets and try to help organize the union" (J.A. 123; Tr. 2226-2227).

When Hill's write-up became known in the plant, a hazing campaign against him began (J.A. 123). The tormentors were Cook, Hart, and McKinney, who worked on the machine next to Hill's and who were known to be hostile to the Union (J.A. 123; Tr. 2223-2224, 2691). The three men talked at and about Hill as he worked, saying he was going to be fired, laughed about his foolishness in sticking his neck out, called out to Hill and to others about the write-up, and whistled at Hill (J.A. 123; Tr. 2224, 2230-2231). McKinney followed Hill about in the dye house, asking if it was his name on the Union leaflet and posing questions about the Union (J.A. 123; Tr. 2230). When Hill spoke to the other men on his machine in connection with his job, Hart would call out that they should not talk to Hill, because he had gotten a write-up and was not supposed to talk to any one (J.A. 13, n. 2, 123; Tr. 2224, 2230-2231). After a few days of this, Hill asked Brinkley if he could stop the three men (J.A. 123; Tr. 2231-2232). Hill referred to his write-up and pointed out that he was "trying to abide by the company rules" (J.A. 123; Tr. 2232). Brinkley said he would "check into it," but said nothing more on the matter to Hill until the day of his discharge (J.A. 123-124; Tr. 2233, 2235). A day or so after Hill's complaint to Brinkley, a cup with a card attached was hung between his work place and that of Cook, Hart and McKinney (J.A. 124; Tr. 2233). The card read, "Money for James Hill to hunt a new job with" (*ibid.*). Later, in his office, Brinkley showed the cup and card to Hill, and asked if he knew anything about it (J.A. 124; Tr. 2234). When

Hill said that he did not, Brinkley said nothing more (*ibid.*).

On September 14, while Hill was working, employee Bell, whose name also had been on the August 31 leaflet, exclaimed to him, "James, I can't go on like this, I'm going to get my name off that leaflet [and] I'm not going to stick my neck out any more * * *" (J.A. 124-125; Tr. 2235-2236). Hill interrupted, saying that he could not talk to Bell because he had been given a write-up—"I wasn't supposed to be talking; the only way I could get out of it was to talk" (J.A. 125; Tr. 2236). As Bell left, Hill saw Supervisor Elrod standing some 15-20 feet away "looking straight at me" (Tr. 2236). Seeking to protect himself, Hill went over to Elrod and explained, "I just told the boy I couldn't talk to him" (J.A. 125; Tr. 2236-2237). Elrod suggested that Hill tell this to Brinkley, which Hill immediately did (J.A. 125; Tr. 2237, 2715). Brinkley's response was to fire Hill on the spot. Brinkley said that he was "fed up"; it looked to him as if Hill could not "get along with the boys" (J.A. 125; Tr. 2237).[8]

B. The Decisions of the Board and the Court of Appeals

On these and similar facts and the other evidence in the record, the Board found that the Company violated Section 8(a)(3), (4), and (1) of the Act by discharging 18 employees, including those discussed above, because of their union activities, and/or be-

[8] At the same time, Brinkley told Hill that he had discovered Hill's complaints about harassments by Cook, Hart, and McKinney "to be completely unfounded" (J.A. 123-124; Tr. 2235).

cause they had testified adversely to the Company in *Stevens I* (Pet. App. 36a, 44a-50a, n. 11, 55a-63a, 65a). The Board also found that the Company violated Section 8(a)(3) and (1) by discriminating against two employees in the assignment of overtime work (Pet. App. 36a, 63a-65a). In addition, the Board found that the Company committed independent violations of Section 8(a)(1) by threatening reprisals, promising benefits, coercively interrogating employees, creating the impression of surveillance, requiring an employee to remove union insignia, attempting to induce an employee to resign from the Union, and discriminatorily applying a no-solicitation rule (Pet. App. 36a-39a).[9]

The Board ordered the Company to cease and desist from these unfair labor practices, to reinstate with back pay the employees discriminated against, and to post appropriate notices (Pet. App. 76a-79a). The Board, however, concluded that (Pet. App. 67a-69a):

> The record before us of extensive unfair labor practices and the history of illegal conduct by the [Company] persuade us that conventional remedies would not be adequate to disabuse the employees of the effects of the [Company's] flagrant conduct and to bring home to the [Company's] employees the message that the [Company] is being required to cease and desist from

[9] The Board found that a preponderance of the evidence did not establish that the Company had violated the Act by its discharge of six other employees, and dismissed the complaint as to these employees (Pet. App. 39a-44a, 50a-55a, 75a). The Union sought review of the Board's action with respect to five of these employees, and the court of appeals sustained the Board's findings as to them (Pet. App. 5a-6a, 10a-13a).

interfering with their rights guaranteed by Section 7 of the Act * * *.

Accordingly, the Board further ordered the Company to mail a copy of the Board's remedial notice to all of its employees at all 43 of the Company's plants in North and South Carolina; to post copies of the notice on the bulletin boards of all of these plants; to read the notice to all of the employees at these plants; to grant the Union, upon its request, reasonable access to the Company's bulletin boards at these plants for a period of one year; and to provide the Union, upon its request made within one year, a list of the names and addresses of all employees in its North and South Carolina plants (Pet. App. 79a-80a).

The court of appeals held that substantial evidence supported all of the Board's unfair labor practice findings (Pet. App. 6a). As to the Board's order, the court of appeals found appropriate the provisions which required the Company to cease and desist from the unfair labor practices found, to reinstate with back pay the discriminatees, to post the notices in all of its 43 plants, to mail a copy of the notice to each of its employees at these 43 plants, and to grant the Union, upon its request, reasonable access to the Company's bulletin boards at these plants for a period of one year (Pet. App. 16a, 20-21a).[10] The court, how-

[10] The court of appeals declined to enforce the portion of the Board's order requiring the Company to provide the Union, upon its request made within one year, a list of the names and addresses of all employees in its North and South Carolina plants (Pet. App. 21a-23a). The Board has not cross-petitioned to seek review of this modification of its order.

ever, as in *Stevens I*, granted enforcement of the reading requirement only at the eight plants where the unfair labor practices occurred and required the Board to afford the Company the option of having the notice read by a Board representative, rather than by its own officials (Pet. App. 16a-20a).[11]

ARGUMENT

1. Petitioner's contention (Pet. 31-97) that the court of appeals erred in affirming the Board's findings that the discharges of the 18 employees and the denial of overtime work to the two employees were discriminatorily motivated raises only an evidentiary issue which does not warrant further review. *Universal Camera Corp.* v. *National Labor Relations Board*, 340 U.S. 474, 491; *National Labor Relations Board* v. *Pittsburgh Steamship Co.*, 340 U.S. 498, 502-503. In any event, the evidence summarized above, and that set forth in the detailed decisions of the Trial Examiner and the Board, demonstrate that there was ample basis for the Board's findings. After noting that "the evidence of anti-union action is overwhelming in some instances, and nearer the borderline in others" (Pet. App. 6a), the court below concluded, after reviewing "the Board's findings and the record with respect to each of the discharges," that there was substantial evidence to support each finding (*ibid.*). There is no occasion for this Court to

[11] In its brief to the court below, the Board stated that it acquiesced in the limitations on the reading requirement imposed by the court in *Stevens I* (see Pet. App. 17a).

make a further canvass of the lengthy record in this case.[12]

2. Contrary to petitioner's assertions (Pet. 7-31), the remedies enforced by the court of appeals, which are tailored to the special facts of this far-from-ordinary case, are well within the broad power conferred on the Board by Section 10(c) of the Act.[13]

a. The requirements that the Company post copies of the Board's remedial notice in all of its 43 North and South Carolina plants and mail a copy of the notice to all of its employees in these plants were plainly appropriate in this case. As the court below stated in *Stevens I* (380 F. 2d at 304), in approving a similar requirement:

> Flagrant violations occurred at each of the twenty plants involved in this proceeding where organization campaigns were instituted. The area is geographically limited and contiguous; the evidence shows that the Company's policies were not determined at individual plant levels alone. That

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[12] Although employee Suratt did not testify at the Board hearing in this case (see Pet. 31), the circumstances of his discharge were so clearly established by the other testimony in the record (see the record references, *supra*, pp. 5-7) that the Board could properly make an unfair labor practice finding with respect to Suratt. And, respecting employee Willard Page (see Pet. 32), the Board found that his misconduct, when balanced against the Company's numerous and flagrant unfair labor practices, was not sufficiently serious to disqualify him for reinstatement (Pet. App. 59a, n. 13).

[13] Section 10(c) authorizes the Board, upon finding an unfair labor practice, to require the employer "to take such affirmative action * * * as will effectuate the policies of this Act."

> being so, including the other twenty-three Carolina plants in the order was justified "since there is every reason to anticipate that if not deterred, [the Company] would pursue the same discriminatory policies" throughout the region.

Concerning the mailing requirement, the court added (*ibid.*):

> At the outset of the Union campaign, the Company posted its own Notice * * * on the bulletin boards in the plants involved in this case. But the Company obviously thought that mere posting would not be sufficient to drive home its point, because in addition it mailed a copy to each employee in the plants. The Board's notice is entitled to the same circulation for the same reasons.

b. In view of the flagrant and pervasive unfair labor practices that the Company engaged in, it was also permissible for the Board to conclude that, in order to eradicate the lingering coercive impact of those illegal acts, it was necessary for the employees to receive oral assurances at their job sites that the Company would respect their organizational rights. Despite petitioner's repeated characterization (Pet. 13; see Pet. App. 17a, n. 8), the requirement that the Board's notice be read to the employees in the plants is not tantamount to a "confession of guilt." The notice to be read (Pet. App. 81a-84a) speaks prospectively, and merely advises the employees that the Company will not engage in certain specified conduct that it is legally enjoined from engaging in. Admittedly, it does not recite the cease and desist provisions of the Board's order, nor does it assert that the Company

has engaged in unlawful conduct in the past. Moreover, the court below, as it did in *Stevens I*, modified the reading requirement so as to afford the Company the option of having the notice read by a Board representative instead of by its own officials.[14] As it explained in *Stevens I* (380 F. 2d at 305), "This alternative eliminates the necessity of participation by the Company, if it so desires, and still guarantees effective communication of the Board's order to the Company's employees."

Nor is review of the reading requirement in this case warranted because the Courts of Appeals for the Fifth and District of Columbia Circuits have declined to enforce similar reading requirements. See *National Labor Relations Board* v. *Laney & Duke Storage Co.*, 369 F. 2d 859, 869 (C.A. 5); *International Union of Electrical Workers* v. *National Labor Relations Board (Scott's Inc.)*, 383 F. 2d 230, 234 (C.A. D.C., Wright J., dissenting), certiorari denied, 390 U.S. 904. Those decisions, like the instant case, turned on the particular circumstances involved. The unfair labor practices in *Laney & Duke* were not as extensive and aggravated as those here. While the situation was somewhat more severe in *Scott's*, the court, while declining to sanction a reading requirement there, acknowledged "that some conduct on the part of an employer or a union might reach such extreme dimensions as justify the novel and drastic step of requiring the offending party to stand up be-

[14] Similarly, as in *Stevens I*, the court limited the reading requirement to only those plants where the unfair labor practices occurred (Pet. App. 17a).

fore the employees and read the Board's notice publicly" (383 F. 2d at 233-234). The instant case is such a situation, and thus the cases are not in fact inconsistent.

c. Finally, on the facts of the present case, the Board properly included the additional requirement that the Company grant the Union, upon its request, reasonable access to the Company's bulletin boards in its 43 North and South Carolina plants for a one-year period. While the Second Circuit declined to enforce a similar provision in *Stevens I* (380 F. 2d at 305), it found that here the Board had made an adequate showing that access to the Company's bulletin boards was "necessary in order to offset the Company's use of the boards in its campaign of coercion and in the posting of lists of employees who had joined the Union, the names of those employees who withdrew being 'scratched' from the lists" (Pet. App. 20a).[15] As the court concluded (*ibid.*):

> [I]n view of the Company's use of the boards in combatting the Union, giving the Union reasonable access to them will effectuate the purposes of the Act, in that it will help to restore to the employees the opportunity to hear all viewpoints.[16]

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[15] See *National Labor Relations Board* v. *H.W. Elson Bottling Co.*, 379 F. 2d 223, 226 (C.A. 6), where, in circumstances less aggravated than the unfair labor practices here, a similar requirement was enforced.

[16] Petitioner's concern about the absence of limitations on the quantity or nature of the materials which the Union might place on the Company's bulletin boards, and the lack of any definition of the frequency of Union access thereto in the Board's order (Pet. 8-12), seems contrived. In this regard,

CONCLUSION

For the reasons stated, the petition for a writ of certiorari should be denied.

Respectfully submitted.

ERWIN N. GRISWOLD,
Solicitor General.

ARNOLD ORDMAN,
General Counsel,

DOMINICK L. MANOLI,
Associate General Counsel,

NORTON J. COME,
Assistant General Counsel,

RICHARD S. RODIN,
Attorney,
National Labor Relations Board.

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petitioner makes the identical arguments which were made to and rejected by the court of appeals (compare Pet. 11-12 with Pet. App. 21a). As the court below stated (Pet. App. 21a): "The Board's order limits the Union to 'reasonable' access to the bulletin boards. We trust that the Union will bear that in mind, and that the Company does not intend to litigate the reasonableness of every piece of material posted by the Union."

APPENDIX

The relevant provisions of the National Labor Relations Act, as amended (61 Stat. 136, 73 Stat. 519, 29 U.S.C. 151 *et seq.*) are as follows:

Sec. 7. Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all of such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in section 8(a)(3).

Sec. 8.(a) It shall be an unfair labor practice for an employer—

(1) to interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 7;

* * * *

(3) by discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization:

* * * *

(4) to discharge or otherwise discriminate against an employee because he has filed charges or given testimony under this Act;

* * * *

Sec. 10.(c) * * * If upon the preponderance of the testimony taken the Board shall be of the opinion that any person named in the complaint has engaged in or is engaging in any such unfair labor practice,

then the Board shall state its findings of fact and shall issue and cause to be served on such person an order requiring such person to cease and desist from such unfair labor practice and to take such affirmative action including reinstatement of employees with or without back pay, as will effectuate the policies of this Act: * * *

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